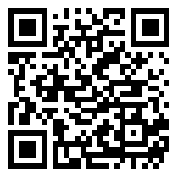

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A STUDY OF THE ANTITRUST LAWS

HEARINGS

BEFORE THE

SUBCOMMITTEE ON ANTITRUST AND MONOPOLY

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

EIGHTY-FOURTH CONGRESS

FIRST SESSION

TO STUDY THE ANTITRUST LAWS OF THE UNITED
STATES, AND THEIR ADMINISTRATION,
INTERPRETATION, AND
EFFECT

PURSUANT TO

S. Res. 61

PART 6

GENERAL MOTORS

NOVEMBER 8, 9, 10, 15, 16, 17, 18, 21, AND 22, 1955

Printed for the use of the Committee on the Judiciary



UNITED STATES

GOVERNMENT PRINTING OFFICE

WASHINGTON : 1956

67272

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¹The du Pont case exhibits referred to, which are not printed, will be found in the files of the subcommittee.

DIGEST OF TESTIMONY

TUESDAY, NOVEMBER 8, 1955

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Opening statement of Senator Joseph C. O'Mahoney, acting chairman

2239 This is continuation of study of antitrust laws begun by Attorney General's committee.

2240 Business has grown so greatly, mergers have been taking place with such rapidity, that it is necessary for the legislative and executive arms of government to come to grips with the problem quickly.

Power to regulate commerce is vested in Congress; but the large corporations that carry on interstate and foreign commerce are chartered by the States. This anomalous situation needs clarification.

2243 Telegram sent to Brookings Institution re appearance of three professors at these hearings.

Statement by Senator Alexander Wiley

2244 These hearings should shed light on many problems which exist, not only in one industry but in many industries.

Better understanding of antitrust legislation is badly needed.

2245 It is his hope the subcommittee will be able to recommend legislation in a nonpartisan way; and that there will be complete cooperation with the subcommittee.

Statement by Senator William Langer

2246 The antitrust laws have been inadequately enforced by both Republican and Democratic administrations. He believes, however, that Judge Barnes has done a good job as head of Antitrust Division of Department of Justice. Hopes this inquiry will be helpful.

Statement by Joseph W. Burns, chief counsel

The task is to determine what the objectives of the antitrust laws should be and what amendments are needed to make them more effective. "The subcommittee decided that the General Motors Corp. would provide a useful case study of the phenomenon of bigness and concentration in our economic system. We shall seek to develop the factual information which is essential to a clear and realistic understanding of this problem."

GM, in part due to the many mergers involved, is today the largest manufacturing company in the world. Its output is varied. "It is also the largest supplier of goods procured by the United States Government."

2247 "We wish to find out historically the relative importance of mergers and acquisitions, vertical integration, banking affiliations, certain trade practices, advertising policies and expenditures, research and development, and other factors which have contributed to the preeminent position achieved by this company and, in particular, we are interested in determining (1) whether or not the present size and scope of General Motors' operations are the result primarily of superior efficiency and competitive skill; (2) whether or not the great power associated with its size and scope, however achieved, carries with it the opportunity for abuse; or (3) whether or not without abuse the very magnitude of the corporation makes competition almost impossible.

"We are also anxious to determine whether the predominant position of General Motors is the result of technological production, distribution, or other factors required by the economic character of the industry or is the result of the company's free choice of business policies which are not economically inevitable."

Will study antitrust suits in which GM has been involved.

Statement of Corwin D. Edwards, professor of business and government, School of Business, University of Chicago

2249 **Qualifications.**

A study of the Japanese Zaibatsu provided him with a different outlook on the monopoly problem; having dominant power in a single industry is not the only form dominant power could take.

2251 **No Government agency has the responsibility of regularly studying the trend of concentration. Nor is there a regular exchange of views between people in and out of government.**

2252 **Power associated with large size shows itself in many ways through its dealings with suppliers, distributors, the Government, or any others who deal with the company.**

2253 **Believes there has been no study made of General Motors by either Federal Trade Commission or Department of Justice.**

Sees quite a bit of difference in relations between large companies competing with each other in same industry and relations between these companies and smaller rivals.

2254 **Countervailing power as a system of checks and balances sometimes curbs the power of large companies, but these "checks and balances do not mesh very well." Frequently works to the detriment of smaller companies and third parties.**

There is ample opportunity for new business of all sizes, but doubts that big business is responsible for these opportunities.

2255 **Spending power of big business frequently gives it competitive advantages over smaller rivals.**

Large businesses have not shown conclusively that they are more efficient than smaller companies.

2256 **Distinction should be made, when evaluating efficiency, between large plant that produces large quantities of goods under one roof and large corporation that has several plants.**

There are possibilities of both efficiency and waste in large companies; they have relatively little to do with technology.

2257 **Big business may have managerial superiority.**

2258 **There is increasing decentralization with increased delegation of authority. "This raises a question as to just what are the remaining central functions which it is so important to have done centrally rather than in smaller organizations."**

There are two approaches to the problem of reducing power of giant conglomerates. If a large company has abused its power, specific examination and specific correctives as provided by antitrust laws would be proper procedure. Edwards does not believe there would be a uniformity of pattern so that one overall rule could be applied, "such as a ceiling on size."

Second problem is to keep the economy free of "Zaibatsu-like tendencies." Would keep close watch on the largest companies and would "like to see governmental policy aimed at accomplishing the result that the big business enterprises, as a group, grew somewhat less rapidly than the economy, rather than somewhat more rapidly," as they seem to be doing now. This is difficult because incentives to grow should not be impaired.

One move in this direction has been increased emphasis on antimerger law. Another remedy worth exploring is providing incentives for large companies "to slough off voluntarily portions of their size."

2259 **Tax laws are no longer a deterrent to a sloughoff.**

Basic principles of antitrust statutes are sound, but operation of merger law is "disappointing." Would be helpful, if Congress provided more enforcement resources; and if mergers could be dealt with by less extensive and elaborate processes.

2261 **Would be afraid of a proposal to set a limit on the number of different businesses a corporation could engage in.**

2262 **Thinks the law should be tightest covering merger of companies with similar, rather than dissimilar, operations.**

2263 **If a business has attained bigness without resorting to unfair or predatory practices, the test to determine if the Government should regulate its size would be to test its power.**

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When there is a strong presumption that a merger will have adverse effect on competition, it might be made a rebuttable presumption in the law for certain classes of mergers, thus enabling enforcement agencies to move faster.

2264 There is a difference between companies asking for prior consideration of a proposed merger and a proposal which would require advance approval of the agency involved.

2265 If there is increased trend toward unjustifiable concentration, he would like to see our "line of policy rest upon divestiture and dissolution of big companies for cause, where there is cause, rather than upon any wholesale slashing." But figures showing concentration should be more accurate than at present.

Would be "troubled" by two things in a proposal to establish a Government agency with the power to prevent integration not justified by production or distribution economies, and to compel reorganization of excessively large enterprises. First, we don't know enough about production and distribution economies; second, it would delegate too much power.

2266 Problems in business concentration have arisen because of the establishment of a joint subsidiary by two or more companies pooling technology from different fields; and because the growth of pension funds seems to "invite intercorporate investment of the investment trust type."

Statement of Donald A. Moore, member, Department of Economics, Michigan State University

2267 Qualifications.

Will confine himself to some observations on structure of automobile industry, by which he means, generally, "the sizes, number, and firms in relation to each other and to other business units with whom they deal."

2268 Automobile assembly industry may be described as an oligopoly with competition between six firms. The industry does not remain static for long at a time, however.

2269 Statistics on the industry as a whole, including suppliers, dealers, etc.

2270 Listed 7 conditions for survival: "(1) A diverse product line covering a considerable part of the price range; (2) the ability in most years to sell a sufficient quantity of autos and other products to realize the economies inherent in the mass production process; (3) adequately financed, dependable, and geographically well-distributed dealer and service facilities; (4) financial resources adequate to bear the cost of inventories, research, model changes, and occasional bad year; (5) an optimum combination of vertical integration and outside supply sources; (6) the engineering and marketing knowledge necessary to innovate without departing from the market's notion of an acceptable automobile; and (7) the existence of a satisfactory used car market for the product."

Elaborated on these seven points.

2277 Outlined briefly the history of the industry, so as to better understand the existing pattern. There are five stages in its growth: (1) Up to 1898, primarily experimental; (2) 1899-1910, small firms producing for a limited market.

2278 Ford Motor Co. broke the back of an attempt at monopoly control by the Association of Licensed Automobile Manufacturers.

2279 The highest number of manufacturers in the field at one time was 88 in 1921. There were 181 at one time or another in the years 1903-26.

2280 There is no firm surviving today that entered the field after 1923.

During the time there were the largest number of firms, there were not a few doing the great bulk of the business as there are today. Ford produced more than 55 percent of total in 1921, but the remainder was divided up more equally than it is now. As far as he knows, that is the largest percentage of the market ever attained by a single producer.

2281 As an outgrowth of the defeat of the licensing group by Ford, the Society of Automotive Engineers was formed, which contributed a great deal to the technology of the industry without discernible monopolizing effect. Also, patent pooling was important for a time, but not so much since 1930.

Two giants were formed in the period through 1910—Ford and General Motors. Each contained ideas essential to the growth of a successful firm.

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- Ford contributed his ideas of mass production and vertical integration, which he achieved without resorting to buying other companies, with the exception of the horizontal integration with Lincoln.
- William Durant, on the other hand, wanted diversification of product line; and felt that financing by bankers, by the stock market, or by other industrialists was necessary to a stable firm.
- 2282 "He succeeded in acquiring a line of successful automobiles with a considerable waste involved because he did discontinue more cars than he continued to produce. Some of them were quite experimental."
- Durant used the holding company device, but Moore does not know if he intended to monopolize the industry.
- 2283 The period 1911-22 was marked by the growth of two large organizations that were acquiring characteristics that have become essential to survival of an automobile industry. There was rapid growth of demand in this period.
- Although Durant lost control of GM to bankers in 1910, he was still active. In 1915 he established the Chevrolet Motor Co. of Delaware, a holding company, which first acquired all stock of existing Chevrolet companies. "Then with funds supplied partly by the Du Ponts it acquired a majority of the outstanding common stock of the General Motors Corp. of New Jersey.
- Funds raised by Chevrolet were used to pay off the commitments made to the bankers by the operation of General Motors itself, and eventually the loans to the bankers were paid off.
- 2284 Durant was out of GM from 1910 to 1915, and was finally forced out in 1920 by the Du Ponts and the Morgan banking firm.
- He had an interest in the original Chevrolet Motor Co. which preceded the new one, the holding company.
- Unable to persuade GM directors to admit Chevrolet, Durant voted Chevrolet's GM stock and got control, and later became president. General Motors of Delaware was organized, with the right to pyramid. They were in the anomalous position of Chevrolet actually owning GM.
- General Motors Holding Co. was formed to turn this upside down and put GM on top, at which time most subsidiaries were dissolved and became operating divisions of General Motors.
- 2285 The Du Pont interest in GM was increased by additional purchase of stock, and has remained at about 23 percent of outstanding stock since about 1920.
- In 1923 the Du Ponts were to sell their GM stock so it could be resold to GM executives. Instead, they sold to their subsidiary, General Motors Securities, thus retaining control.
- In 1920, Mr. Durant got in over his head attempting to support GM stock in a falling market. It was then the Du Ponts and the J. P. Morgan banking firm moved in.
- 2286 It is believed Du Pont wanted control of GM to provide it with a profitable peacetime business.
- 2287 Although du Pont sold increasing quantities of their products to the firm, they never secured exclusive privileges with the General Motors divisions, GM was Du Pont's largest customer between 1939 and 1949, but got only two-thirds of its finishing materials from them.
- They also purchased other materials from Du Pont in this period.
- 2288 The period 1923-41 is described as the time when the Big Three developed as important factors in the industry and the term "independent" becomes more important. It is the time of very rapid decline in number of firms.
- Chrysler Corp., formed in 1923, grew into a major producer by purchasing Dodge and developing Plymouth and DeSoto. They advanced the idea of frequent model changes and highly styled products, coupled with fine engineering.
- "The intense rivalry between the Big Three blanketed the market to the extent that entry was virtually closed, and the exit of a small firm exceedingly easy. There is no evidence of any overt actions on the part of existing firms to prevent entry or to hasten exit."
- Difficulty in obtaining and keeping an adequate dealer organization is quite a barrier to entry into the field today.
- 2289 An extremely important barrier to entry is the high cost of tooling for annual model changes.

Page

Described the period of 1946-54 as "the satisfaction of the deferred demand, and another leveling off period at the end of which we saw some more attrition in the number of firms."

Looking into the future, he predicts a "period of intense rivalry and growth," with a fairly rapid increase in sales as long as economic prosperity continues.

Indicated some implications of present structure of the industry and suggested four possibilities. Discussed the hypothesis that survival conditions add up to significant economies of scale.

Although not always true, "profits as to percent of sale and profits as to percent of stockholders' investment show an unmistakable tendency for profit margins and earnings in investments to vary directly with size."

2293 "If the economies of scale are as pronounced as crude measures indicate, this appears at first to be a classic case where monopoly is to be expected." Fortunately, however, this is not the case in automobile industry. However, since entry is virtually closed, serious error by a small firm could deplete the number by one.

Although a dominant producer may enjoy a highly favorable position in purchasing from suppliers for a while, there are checks on this power, too. Further integration is open, and the suppliers have other outlets.

2294 Manufacturers usually market "genuine" repair parts through their dealers and parts distributors. There are advantages to the public in this arrangement. But the manufacturer of parts has difficulty in getting his product accepted by the public if he does not sell through the automobile manufacturer.

Dealers keep up price competition, thus contributing to competition on the manufacturers' level. However, the small manufacturers are at a disadvantage because of their smaller potential volumes. The dealers do not bear all the burden of price flexibility, however, as the manufacturers have devices to compensate for some of the loss incurred in lower sales prices.

2295 Mr. Moore's prepared statement inserted. Covered in oral testimony.

2306 Discussion of dealer-manufacturer relationships and practices.

2310 It is his belief that as the industry tries to increase sales, even if the market is growing, we will see more and more mass distribution with lower margins for dealers.

The power enjoyed by the large manufacturer gives him a special advantage in forcing cars on dealers.

He believes the size of GM enables it to procure parts cheaper than its competitors.

Knows of no facts to substantiate the theory that GM gets lower prices than can be justified.

2311 Large manufacturer gets special advantages which are not explainable exclusively in terms of savings to the seller.

Although there is a difference in prices a seller charges for original parts and replacement parts, it is not certain that profits are recovered by charging higher prices in the replacement market.

2312 These practices probably tend to keep prices down on new cars and repair costs up on old ones.

2313 Senator O'Mahoney repeated his invitation to GM representatives to sit at the table.

Statement of T. K. Quinn, president, T. K. Quinn Co.

Qualifications.

In his prepared statement he did not take the time to discuss the assault on the antitrust laws nor did he attempt to "show how concentration of power gives rise to demands for administrative regulation and facilitates socialization."

2314 Presented his definition of the term "big business."

"Up to a point, big business is socially efficient, and can be economically justified, but there are limits beyond which we reach danger."

Of all the slogans that have been sold the American public, "the most seriously misleading is that 'bigness is not evil per se.'"

2315 "Any active giant is evil per se in a land where it is sought to preserve life, liberty, and opportunity for the ordinary individual."

The social efficiency of GM cannot be measured "by its balance sheets or profit and loss statements. We must know how the results are secured." What are its relations with its dealers, its suppliers, and what are the social results of its operations?

Disagrees with those who maintain it is not economically feasible to break up General Motors.

2316 Mr. Quinn was interrupted at this point, to resume next day.

WEDNESDAY, NOVEMBER 9, 1955

2317 Letter from Bookings Institution to Senator O'Mahoney refusing to allow three professors who are potential witnesses to testify regarding confidential information.

2319 *Statement by Senator O'Mahoney*

2320 Letter from Brookings Institution to chief counsel, Joseph W. Burns, re testimony of three professors.

Statement of T. K. Quinn, president, T. K. Quinn Co.—resumed

2321 General Motors has acquired 76 percent of the diesel locomotive business of the country. He believes this was accomplished because of its standing as one of the largest shippers by rail in the country. "And when General Motors decided to get 95 percent of the bus business it merely purchased bus lines. The corporation has entered the large gas-engine business and may eventually have most or all of it." GM purchasing power is a tremendous force to reckon with.

2322 Electro—Motive division is the GM division that manufactures diesel engines.

2323 Entered the earth-moving equipment field by buying out the Euclid Co.

Small suppliers dislike arrangements with GM but are compelled by economic necessity to continue them. They are afraid to complain publicly.

"General Motors could at will enter any field it chooses and become even more industrially dominant." If it reduced prices of its electrical appliances and absorbed the losses temporarily or deducted the losses from its tax return, could force competitors to the wall.

2324 Details on activities of individual divisions are lacking as there is no requirement for separate departmental reports.

Recommended that all corporations operating various businesses and departments be required to publish, in detail, balance sheets and profit and loss statements of the various departments once a year.

2325 Criticized communications media for their timidity in refusing to criticize the giants of industry.

There is competition in the automobile industry, but the price competition is exercised by the dealers, not the manufacturers.

2326 If we wish to preserve the independence of the "smaller more socially efficient companies," the excessive power of the giants must be checked. "This does not necessarily mean controlled monopoly. It means restricting autocratic power of the giants to save our system."

2327 There has been an increase in mergers as a defensive move—as protection against the giants.

2328 Decreased number of independents in electrical appliance field indicates it is more difficult for a new firm to enter the field.

This is compared to the difficulty of entry into the newspaper field.

"* * * the only effective practical way to maintain the maximum number of independent companies is to decentralize the big ones at the top * * * to start at the bottom and prevent smaller mergers would amount to further protecting those giants already in existence."

The intent of the Sherman and Clayton Acts has been circumvented; monopoly and oligopoly have grown. Something can and should be done about it.

2329 Existing laws should be enforced; additional legislation is needed however.

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Listed his refutations to arguments most often advanced in behalf of giant corporations:

- 2330 1. That giants have led in expansion and bringing about technological changes.
 2. That concentration of production among few big rivals usually stimulates competition instead of weakening it.
 3. That results are better among bigger concerns because mistakes are more costly.
- 2331 4. That concentration of production among few large rivals stimulates competitors' efforts and as no one in a small group likes to be first to raise prices this leads to protection of consumers against rising prices.
 5. That the bigger the firm the more conspicuous its policies and practices—size makes for better ethical conduct.
- 2332 6. That placing legal limits on size would discourage competition.
 7. That limits on size would interfere with the freedom of consumers to buy what they choose.
- 2334 8. That giants have greater creative ability and potentiality.
 Recommendations for dealing with the problem of giantism:
 "(A) Industries could be classified for the purposes of the legislation, much as they are now classified by the Department of Commerce.
 "(B) Any concern with, say, \$100 million or more in net worth * * * could be declared to be in a special group which, for reasons of sheer size and power, are affected with a special public interest." (Exceptions could be made for industries which require larger capital outlay.)
 "(C) Income-tax rates on the companies that exceed the maximum indicated size could be gradually but reasonably graded upward.
 "(D) These companies would not be permitted to purchase, merge, or absorb other companies.
 "(E) Officers and directors of these companies would not be permitted to serve as officers or directors of any other concerns or corporations.
 "(F) These companies would be required each year to publish detailed profit and loss statements and balance sheets on each department of their total business, according to the industry classification provisions.
 "(G) Any company could remove itself from the oversize class by decentralizing into separate companies, of its own free will and in the way it chose."
 Congress might wish to make exceptions for companies that are otherwise regulated.
 It might also be required that all businesses engaged in interstate commerce obtain a Federal charter.
- 2335 Legislation is advisable which would "curtail the practice of stock holding companies by which a single small group concentrates what are really personal holdings into a corporation, thereby getting the advantage of the lower corporation tax instead of the higher individual tax."
- 2336 Discussed ethical and moral implications of increased economic concentration.
 Answered attacks on his credibility as a witness.
- 2337 Distinguished between big business and "giant or monster business," in answering the allegations.
- 2338 In discussing Professor Galbraith's theory of countervailing power, he expressed the belief that the public welfare would not be served by having a few giant companies opposing each other, with no in-between competition.
- 2339 He agrees, with reservations, that big business creates opportunity for smaller businesses, but explained that there are many instances in which this would not be true.
 The statement "that what big business possesses is not a physical superiority but a managerial superiority" is "very much theoretical." Feels "there is an unfortunate disposition to glorify the corporation * * * president."

Page

- 2341 General Motors' entrance into the field of refrigeration resulted in a price war between them and General Electric, which finally resulted in an "understanding" between the two companies. This was around 1930.
- 2342 Believes there is no economic limit to the size GM could grow to.
- 2343 It is conceivable that unless Congress draws the line somewhere, for economic expansion, the inevitable result will be complete concentration. The larger the corporation the less the percentage of stock needed to control it, because the stock is more widely dispersed. It is possible that Du Pont, with 23 percent of the stock, controls GM.
- 2344 "Economies of scale" may not be economies at all, but merely a result of an arbitrary exercise of power, favoring the big business because of its market power.
- 2346 Discussion on the development of fluorescent lighting as competition to the incandescent light.
Mr. Burns made a statement on the phase of the hearings dealing with the growth of GM in the diesel locomotive field.
Statement of V. H. Peterson, vice president, Fairbanks, Morse & Co.; accompanied by Robert B. Craig, vice president, and Anan Raymond, counsel
- 2347 Statement of identification. Gave background of the company, founded in 1830.
- 2348 Their share of the diesel market is 7 or 8 percent. However, the production is not limited to locomotives alone; it is varied.
Gave the committee figures showing their percentage of the market over the years.
- 2349 In 1944, General Motors was getting 58 percent of the market. As of October 1955, they had 76.62 percent.
The proportion of output by Fairbanks, Morse fell behind, relatively speaking, with the output of Electro-Motive, the GM division. This took place even though Fairbanks, Morse did all the normal things one does when trying to sell a new product.
- 2350 In 1944, a war year, the Government designated Electro-Motive to build road diesels. As Mr. Peterson recalls it, Baldwin and Alco were designated to build yard switchers. This was the time Fairbanks, Morse entered the field.
Although it could be assumed to be true, he knows of no situation where they have been injured by the weight of GM traffic.
- 2351 A preponderance of GM locomotives on a railroad makes it more difficult for them to break into that road.
They are doing a "fairly extensive" amount of business with the Navy at this time. They made diesel motors for ships long before they made locomotives.
- 2352 Electro-Motive started working with diesel engines back in the twenties, before it became a part of GM, and when it was Winton Engine Co.
- 2353 There has been a merger of Lima-Hamilton and Baldwin.
General Motors being such a large corporation probably gives them greater advantage or greater ease of entry to top management of a railroad.
They are optimistic about obtaining a reasonable share of the future market.
- 2354 It is more difficult to compete with GM because of GM's mass production facilities, which gives them an economic advantage.
All companies in the field compete both as to price and quality.
- 2355 A successful corporation can parlay its profits into diversification and from that into an advantage over other companies already in an industry.
General Motors' ability to turn out more units gave them an advantage when the demand was high.
- 2357 GM's size and financial strength make it tougher for a smaller company like Fairbanks, Morse to compete with them.

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Statement of O. De Gray Vanderbilt III, vice president in charge of commercial activities, Baldwin-Lima-Hamilton Corp.; accompanied by R. Nevin Watt, vice president in charge of transportation sales; Robert McAdoo, counsel; and John F. Dooling, of the firm of Sullivan & Cromwell

- 2359 Statement of identification.
History of the company.
- 2360 They manufacture products other than locomotives.
Statistics on their business.
- 2361 The Baldwin Co. started making diesel locomotives in 1936. Prior to that they made other types of diesel engines. Lima started manufacturing diesel locomotives about 1947.
- 2362 It is Mr. Watt's recollection that the Winton Co. started making diesel locomotives after it was acquired by General Motors, and that they rose very rapidly.
- 2364 There are four types of locomotives: a switcher yard locomotive, an all-purpose locomotive that may be used in either switching or road service, a passenger type, and a freight type. Baldwin started out with the switching type because the market seemed to favor it.
- 2366 When GM started production and sale of diesels, it took away from the market for steam engines.
It was obvious at this time that the diesel would ultimately supplant the steam locomotive, but some railroads still stuck with steams. So they continued building some steam-locomotives as well as diesels, but GM could concentrate on diesels alone.
GM was selling to railroads that had been their customers.
There is no doubt that GM had a running start on the market.
- 2367 During the war years, Baldwin was restricted to development of the switcher type locomotive. There was also a great demand for steam locomotives at that time, so that their "resources, energies, and facilities were directed toward fulfilling those requirements which diverted that effort from the development of this new product."
About 1947 they really started rebuilding, and ran into the "usual problems of developing and launching a new product * * * and of retaining what we considered a fair economical share of the existing market."
- 2368 Both Alco and GM had a head start, with GM having a special advantage because of its manufacturing facilities.
Figures show that Baldwin's percentage of the market of all types of locomotives has steadily decreased.
- 2369 It is very difficult to compete costwise with someone who has all the best of facilities for mass production. Development of these facilities requires a great outlay of capital, and it is doubtful if anyone else could afford to do it.
- 2370 General Motors has been called the largest shipper of freight in the United States. This doubtless has a great influence on railroad purchasing.
- 2371 When diesels were first marketed, General Motors set up repair stations to service and repair them, which other companies were unable to do. This also helped them market their product.
Development of the diesel brought with it standardization which in turn was a factor in inducing railroads to buy from one manufacturer instead of many. Therefore, the company that got into the market first had an advantage.
- 2372 That was one of the problems that had to be met in the postwar switchover from steam to diesel locomotives.
GM had the money to put sample diesels on the tracks so they could be used in service, thus breaking down resistance to the change. Baldwin had to sell them outright. Mr. Vanderbilt said that GM deserves credit for having done this "missionary pioneering work." They could not have afforded such a program.
- 2373 Although this is a gloomy period, Baldwin does not intend to get out of the business. They have hope for the future. Also, they are concentrating on development of "a better mousetrap," which they think they have.
- 2374 Baldwin has manufactured fine quality diesels in 1955, but have sold a "very unsatisfactory quantity of them."

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The new principle they are developing may, to some extent, obsolete diesel electric type locomotives.

2375 They are still turning out a few steam locomotives for export but none for domestic use.

Statement of William F. Lewis, vice president in charge of marketing, Alco Products, Inc.; accompanied by W. J. Bolle, Alco Products, Inc., and Bruce Bromley, attorney

2381 Statement of identification.

There is plenty of tough competition within the locomotive industry.

2382 Alco no longer builds only locomotives, but produces some 3 dozen products for 11 different industrial markets, in which competition is also tough.

Gave a chronology of the locomotive industry.

"Alco has built more locomotives than any other company in the world—about 80,000—since 1901, when the company was first organized." Most of these were steam locomotives. They also turned out the first successful diesel locomotive, in 1924.

2383 The basic explanation of GM's position as largest producer of diesels lies in understanding what happened during World War II. "Alco, as the originator and major producer of the diesel switcher, was restricted by the Government material allocations during the war period to the manufacture of diesel switchers. We also produced steam locomotives and a multitude of war products, primarily tanks and other ordnance weapons * * *. On the other hand, General Motors was given the assignment by the Government to turn out road diesel locomotives at a high production level. For a full appreciation of this situation, I would like to emphasize that Alco at the end of 1941 had virtually completed the engineering on what would have been the first fully complete line of diesel locomotives of an entirely new design.

"The head start which General Motors gained in the road diesel locomotive field from its protected position during the war was tremendous. As of December 31, 1945, there were approximately 1,500 freight or passenger diesel locomotives in service distributed among about 35 class I railroads, and almost all of this number had been built by General Motors. The war years had allowed GM to eliminate many of the bugs inherent in any new product design. The various railroads which had acquired GM road locomotives during the war quite normally were inclined to favor GM in new diesel purchases for road service in order to simplify the locomotive servicing and maintenance of a complicated new product."

Alco introduced its line of diesels in 1945-46. It was an instant success, and they invested about \$20 million in facilities. They often were producing at capacity levels, but there was a sharp drop in orders in last half of 1954.

2384 They are confident they can compete with GM for the remaining business.

2385 In 1934 Alco was the only company making diesel switching engines; by 1940 their percentage of the market was down to 26, but General Motors was up to 64.

Mr. Lewis feels this happened because they were primarily turning out steam engines, but making some diesels almost by hand, while GM tooled up for the sole purpose of building diesels.

2386 From this time until the imposition of war restrictions they could have developed and gone after the diesel business if they had wished, but with limited facilities. They were, however, competing with GM in price.

Eventually they were able to overcome the advantage GM had in freight diesels.

2387 Explained the decline in their percentage of market of various types of engines.

2388 They are on the upswing again and hope to wind up 1955 with between 19 and 20 percent of the market.

2389 They went out of the steam locomotive business in 1948.

GM sold diesels to customers that had, historically, been primarily Alco's when the product involved was steam instead of diesel.

- Page Alco did not, however, lose any customers entirely during the postwar period.
- 2390 Railroads that had not bought rolling stock during the war and, therefore, had not started with GM diesels, stayed with Alco.
- Most railroads are reluctant to use diesels from two manufacturers. Alco has tried to persuade them to use more than one supplier, with some success.
- 2391 The fact that GM is such a tremendous rail shipper has some bearing on a railroad's purchase of GM engines, but Mr. Lewis does not believe it is the only consideration they use.
- 2392 Inasmuch as the market for new locomotives is almost completely satisfied, it is expected that the market for replacement parts will be more important.
- 2394 Senator O'Mahoney said the committee would want to get the complete story of 1942 order giving GM exclusive rights to manufacture diesels, which "placed a handicap upon the pioneers of the industry and gave a great advantage to the newcomer."
- 2395 Mr. Bromley said they had no complaint about the order, as they felt it was done in the national interest.

THURSDAY, NOVEMBER 10, 1955

Statement of Harold L. Hamilton, retired vice president, General Motors Corp., accompanied by Henry M. Hogan, vice president and general counsel, General Motors Corp.

- 2397 Statement of identification.
- 2399 Gave technological history and development of the early efforts which led to the first experiments with diesel locomotives. His company, Electro-Motive Engineering Co., was formed by him in 1922, and was entirely separate from the Winton Engine Co. Later, when they found they were doing business almost exclusively with railroads, they changed the name to Electro-Motive Co.
- 2412 Before 1930, the Electro-Motive Co. was turning out gas-electric cars. They did not, however, manufacture them themselves. They had a "close working arrangement" with Winton Engine Co. and one of the car-building firms; electrical equipment was furnished by General Electric or Westinghouse; and other components were supplied by other manufacturers. The cars were then assembled according to Electro-Motive specifications.
- They set up parts depots throughout the United States to service the motorcars.
- 2413 By this time, many of their competitors were producing the same type of car because of the work Electro-Motive and General Electric had done on the electric transmission.
- Rising cost of gasoline for gasoline-electric cars and increased use of highway motor vehicle traffic started the chain that resulted in earnest efforts to develop the diesel locomotive. Since Winton had turned out other types of diesel engines, Electro-Motive worked with them on this project.
- 2416 The Germans and the British had done much of the pioneering in the diesel field.
- 2421 In 1930, after much experimentation and research, they realized they needed about \$10 million to manufacture the engine they had been working on—about \$5 million to design it and \$5 million to build the tools and equipment to start production. Not only did they not have the \$10 million, he doubted if there was that much venture capital in the diesel industry at that time.
- 2422 At about this time, the Winton Engine Co. was building some diesel engines for yachts owned by officials of General Motors. It was during this period that Mr. Codrington, of Winton, was talking with Mr. Hamilton about the necessity of getting capital that would not control them, so that they could carry on their project without outside interference. Some of the GM people were interested in obtaining Winton Co., so Codrington and Hamilton sat down and looked at what they had to offer. CM had complete, tremendous, research facilities and plenty of capital, so the offer was accepted and Winton became a subsidiary of General Motors. There was no change in personnel.

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- 2423 It was also about this time that Mr. Hamilton met Dr. Kettering, vice president in charge of research at GM.
- 2426 Continued his story of the development of diesel power.
- 2429 In the fall of 1930, Mr. Codrington told Mr. Hamilton that he thought General Motors might be willing to take Electro-Motive into the GM family, even though they were in the development stage and not yet ready to put their diesel locomotive on the market. As he had mentioned before, venture capital was scarce, and the country was in the midst of the depression. Dr. Kettering, too, was interested in what Electro-Motive was doing.
- As a result of these conditions, they were very receptive to the GM offer, an agreement was reached, and a stock exchange took place. At this time Mr. Codrington was president of Winton Engine Co., a wholly owned subsidiary of General Motors.
- In December of 1930 Electro-Motive became a wholly owned subsidiary of GM with no relation to the Winton Co. except that GM owned the stock of both companies.
- 2430 At the time Winton became a subsidiary of GM they were producing diesels in quantity, most of them marine engines. There were other companies in the field, too, but none of them were manufacturing diesels for locomotives.
- 2431 There are at least 5 or 6 companies that build large stationary diesel engines but are not involved in the locomotive field at all.
- 2433 When Electro-Motive and General Motors exchanged stock, Electro-Motive was worth about \$95 a share; General Motors was worth about \$45 a share.
- Everyone involved understood that Winton and Electro-Motive were working on a specific program when they joined GM—especially Dr. Kettering. They had the specifications but no production and no business.
- Mr. Hamilton said: "We knew we had an economic potential that was just opening up like a rose once we could get over some of these hurdles, and the hurdles were challenges to General Motors research people, and they were anxious to take hold of it, and I am sure Dr. Kettering assured the General Motors people there was no question but what we could do it."
- 2434 Mr. Hamilton had been the prime mover in bringing Winton and Electro-Motive together and was bringing this know-how—all this background and thinking—to General Motors. With this he brought to GM a staff of people who had made significant contributions to this development.
- He then outlined the progress made under the aegis of GM.
- 2443 In 1938 they made the decision to start turning out locomotives, including the electrical equipment and transmissions, on a "volume basis."
- 2444 In 1936, Electro-Motive had been running in the red for about 6 years, with GM (Chevrolet) paying their salaries. At this time they started marketing locomotives. The railroads were told that if they accepted the standardized product, the price to them would be reduced as the costs to Electro-Motive went down; they would not absorb the lower costs in extra profit nor carry it over to take the loss on other models. The price had dropped from \$72,000 to \$59,500 when the war came along.
- 2445 At the time this decision was made, they had no orders—no sales had been made.
- 2447 Hamilton does not know exactly how much money was spent in development of these locomotives from 1930 until the first commercial sale was made, but he thought the whole program had cost "in the order of \$4 million."
- All engines were built at the Winton plant until 1938. The electrical equipment had been supplied by electrical equipment firms. When the LaGrange plant was designed, it was designed in such a way that it could expand into the manufacture of the engines and electrical equipment.
- 2451 By the time they got to the stage of building the LaGrange plant, they had about \$22 million invested in the plant, building, tools, etc.

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Starting back in the twenties, they had started establishing spare parts depots. Over the years, these have grown to be warehouses and repair shops, although some of the railroads do all their own repair work. The smaller lines are the ones that utilize the repair and rebuilding facilities the most.

2455 Estimated investment up to about 1954 is \$74 million.

There was some difficulty in selling diesel locomotives when they were first put on the market in 1934, so they employed a sales force. Unlike automobile dealers, they worked on a straight salary—no commission.

2456 It is not the general practice to deal with the top executives of a railroad when sales are made. At first, the manufacturer would supply the railroad with a locomotive so it could be tested for performance. After the railroads had become acquainted with this new type of power, however, sales were handled in a more routine manner.

2458 In the thirties money was very scarce, so Mr. Hamilton conceived the idea of leasing locomotives to railroads with an option to buy. GM balked at the idea at first, but finally gave him a rotating fund of \$5 million to work with.

2459 This new philosophy of railroad financing caught hold and later, as the railroads got a little money, they started making down payments on their own equipment.

2460 GMAC did not finance this purchasing plan. Mr. Hamilton said, "We underwrote the paper, but they were the ones that handled the cash." He called GMAC "the bankers" who "just sat there and went through the motions." Generally speaking, the banks handle financing now.

GMAC furnished the financing for 2 or 3 years because at first the banks were reluctant to back an untried product. However, this financing was not essential to sell locomotives that were produced on the assembly line principle, "because if we had not had any of the lines in receivership, the railroads that were able to pay cash in those days would have kept us rolling."

2461 He resents the inferences that have been made about his relationship with GM, especially as he started the Electro-Motive Co. "with one stenographer and one secretary and my own money." He has always been the president and laid down the policies and been more or less "the guiding influence."

When someone says the success of the project was due to artificial conditions—(1) the traffic influence of GM, and (2) that a governmental regulation gave them an advantage—and their domination of the business is because of these two reasons, he takes exception to the statements. He explained his reasons for feeling so strongly.

2464 *Closing statement by Senator O'Mahoney*

We must, in these hearings, try to determine if "bigness itself, without any abuse at all, may be producing a concentration which will destroy inevitably the political liberty of the people." Although some people may think that statement exaggerated, the Senator does not. Therefore, all facts must be sought and put on the table for all to see, with partiality to none.

TUESDAY, NOVEMBER 15, 1955

2467 Mr. Burns introduced the first witness, Mr. Ewart Harris, who had been one of the Department of Justice trial attorneys in the case in Chicago entitled "*United States vs. du Pont, General Motors, and U. S. Rubber.*" It was made clear that the hearing is not for the purpose of retrying the case, but only to put on the record the facts that were brought out in the trial. The suit was brought under the Sherman Act. The court ruled against the Government; the Government has appealed.

Statement of Ewart Harris, attorney at law

2468 Statement of qualifications.

The Government sought divestiture of the du Ponts' holdings in General Motors, divestiture of the du Ponts' stock in United States Rubber, divestiture of the stock held by GM in Ethyl Corp., and divestiture by the du Pont Co. of the plants which manufacture tetra-ethyl lead.

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The Government charged the du Pont-GM relationship was improper because the du Pont Co. had bought into GM to obtain a market for materials used in automobiles which they produced; the market was closed to competitors to the extent of 60 to 70 percent of required supplies.

This, however, is not at issue in the committee.

- 2469 The Government appealed only from the part of the adverse judgment which related to relations between du Pont and GM, not the rubber section.

The documents he submits are undisputed documents.

The first exhibit he submitted was a report made by John J. Raskob, December 19, 1917. He was treasurer of du Pont and, Harris believes, a director of GM "in the regime of Durant." In this report Raskob recommended to the finance committee that they purchase \$25 million in common stock of Chevrolet, which was a separate corporation at the time under Durant's control.

In this report, Raskob outlined the General Motors structure and history, and cited financial reasons for advocating purchase of this stock by du Pont.

- 2473 Raskob's summary:

"1. With Mr. Durant we will have joint control of the companies.

"2. We are immediately to assume charge and be responsible for the financial operation of the company * * *.

"3. The du Pont Co., if the class A stock is sold to the stockholders, will share in the profits of the industry to an extent equal to 120 percent on our investment and will receive 14 percent in annual dividends thereon; or in the event of carrying class A stock in our treasury, the dividend rate will be about 12.6 percent and will share in the earnings about 42 percent and this after paying \$20,000,000 war taxes.

"4. Our purchase is on better than an asset basis.

"5. Our interest in the General Motors Co. will undoubtedly secure for us the entire Fabrikoid, Pyralin, paint, and varnish business of those companies, which is a substantial factor."

Raskob then made it clear that the directorates of the motor companies will be chosen by du Pont and Durant, that "ultimately the du Pont Co. will absolutely control and dominate the whole General Motors situation with the entire approval of Mr. Durant, who, I think, will eventually place his holdings with us taking his payment therefor in some securities mutually satisfactory."

- 2474 Mr. Harris said Durant did vanish from the scene shortly afterward.

It was Raskob's contention that du Pont had expanded during the war and could not go backward, but must continue building. (Most of their business was in explosives.)

Document No. 2 is another report from J. J. Raskob to the du Pont finance committee, dated March 8, 1918, which summarized conditions surrounding this transaction.

- 2484 Du Pont had acquired "a 23.83 percent interest in the common stock of the enlarged General Motors Corp." This interest has hardly changed in the interim.

- 2485 Listed members of the board of directors and finance committee of General Motors, showing du Pont control.

- 2486 Names of companies acquired by du Pont in year prior to March 1918.

- 2490 Committee exhibit No. 3 is another Raskob report to the finance committee, dated March 19, 1920. Outlined a plan for additional financing for GM.

- 2491 Senator O'Mahoney commented: "* * * we have here clearly illustrated on the statement of Mr. Raskob a plan of financing a corporation, a corporation altogether outside of the Federal law.

"There is no Federal law which places any rule of procedure on the building of the giants. They can be constructed only through State corporations which have no jurisdiction over the field in which the business was to be carried on * * *."

It is Mr. Harris' belief that although this recommendation was approved, it was never completely carried out.

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2492 Committee exhibit No. 4 showed continuing interest of du Pont in GM and GM's continued expansion. It also showed how the Nobels Co., a European explosives firm; a British corporation, Explosives Trades, Ltd., and Canadian Explosives, Ltd., were brought into a stock transaction with Chevrolet Motor Co.
- 2494 Senator O'Mahoney: "The real question which lies at the very basis of this whole study by our committee is whether the structure of corporate activity in interstate and foreign commerce built up through the profits and the savings of explosive companies in the United States, in England, and in Canada is the pattern by which the American economic system of small business and local business * * * is to be exploded."
Went into the part J. P. Morgan & Co. played in financing transaction. Du Pont entered a syndicate with Morgan & Co. as managers. It is believed this was formed to keep price of GM stock up.
- 2495 "Under date of November 19, it became necessary to relieve W. C. Durant of approximately 2,600,000 shares of no-par value General Motors common stock * * *"
Little stock was bought or sold by the syndicate, and it is understood Durant complained that the syndicate failed to keep up the price. There was a sizable discrepancy noted in price of the stock within less than a year's time.
- 2496 Continued with exhibit No. 4, showing continued investment by du Pont in subsequent years.
In January 1921 they purchased the Durant stock which removed him from his position with GM.
- 2497 At this point, du Pont's percentage of stock went up from 23.8 to about 38 percent.
- 2503 Committee exhibit No. 5 is communication from Raskob to directors. This document points out that du Pont is, at this time, in control of GM. In calculating du Pont's voting strength, "Mr. Raskob included the voting power of the friends of du Pont—Nobel, Canadian Explosives, Nobel Industries, Bonus Custodian, Savings and Investment Fund, and J. P. Morgan & Co.—all are included as a total of 10,907,925 shares out of a total outstanding of 20,477,734 shares."
- 2505 Du Pont denied that it had voting control of the stock of GM, however. Committee exhibit No. 6 tells about the Managers Securities plan, whereby selected employees were able to purchase GM stock at a "remarkable figure."
- 2512 Committee exhibit No. 7 shows the selection of persons benefited by the plan.
- 2516 Committee exhibit No. 8 is a letter from Mr. Raskob "in which he asks the Managers Securities Co. to buy his stock and sets up a figure that he thinks the stock is worth."
- 2517 The executives covered by this plan bought shares in the Managers Securities Co. which, in turn, owned shares of General Motors Securities Co. stock.
This was the plan whereby du Pont decreased its GM stock holdings from 38 to 23.8 percent.
Discussed stock acquisitions and values.
- 2518 Committee exhibit No. 9 shows the interests of du Pont personnel and positions held in GM. Mentioned were Pierre, Irene, and Lamont du Pont.
- 2520 Committee exhibit No. 10 "is a statement of the du Pont stock voting at the General Motors stockholding meetings from the year 1928 to the year 1949." This was stock controlled by the corporation, not the personal holdings of the du Pont family.
- 2521 Committee exhibit No. 11 shows "the positions held by a number of people, du Ponts, du Pont executives, and so forth, in the du Pont Co., General Motors Co., and Wilmington Trust Co. * * * in many cases held at the same time, simultaneously."
- 2525 It is believed that du Pont did very little business with the automobile industry prior to its investment in General Motors.
Committee exhibit No. 12 points up the trade relations existing between the two companies.

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- 2526 Committee exhibit No. 13 is a letter from general director of sales of du Pont. In part, it says, " * * it is the opinion of our Pyralin division sales organization that we are securing 100 percent of General Motors Pyralin sheeting business, and have no basis for any complaint as regards cooperation, etc."
- 2527 Committee exhibit No. 14 records a proposed agreement with Fisher Body Corp. for Fisher to use their Flint products.
- 2528 Sketched briefly the history of relationship between Fisher Body and GM.
- Committee exhibit No. 15 shows that "the relationship between General Motors and du Pont * * * was considered by competitors to be so close that they would have no chance to break into the market unless they quoted perfectly ridiculous prices, and a concern in receivership did just that."
- 2530 Committee exhibit No. 16 shows a further attempt to get Fisher to use Flint products.
- 2531 At one time, GM tried to persuade du Pont to sell Duco to them exclusively. At about this time, a general purchasing committee was created at GM to handle the purchase of products instead of allowing the divisions to handle their own procurement.
- 2532 Committee exhibit No. 20 shows an attempt to stabilize procurement from du Pont at about 75 percent of requirement. It has varied, however, from about 62 to 75 percent over the years.
- The purchasing committee handled the procurement of many articles and supplies from various suppliers, not du Pont alone. This committee went out of existence some time about 1931.
- 2537 Committee exhibit No. 22 is a report explaining how GM may get as much as a 12 percent discount from the standard price. It was also a plan to induce Fisher Body to give du Pont more business.
- 2542 Committee exhibit No. 23 is a letter from the general manager of the Cellulose department outlining the methods for allowing GM—exclusive of its export company—a "superdiscount." This matter was to be held in complete confidence by the purchasing committee or the price structure of du Pont might come tumbling down.
- 2545 Committee exhibit No. 24 emphasizes "the desirability of keeping this matter [the discount plan] confidential and treating it as an arrangement within the du Pont-GM family rather than as a mere concession in prices on individual commodities." There had been a leak.
- Mr. Harris knew of no instances of this discount having been given other purchasers.
- The superdiscount policy went out in 1932. Perhaps coincidentally, it was about this time the Fisher brothers disposed of their General Motors stock. It has been inferred that this superdiscount policy was a special inducement to get Fisher Body to buy more du Pont products.
- 2546 Committee exhibit No. 25 again pertains to the superdiscount policy given GM.
- 2547 These documents indicate that du Pont gave this secret price concession to GM by selling at higher prices to its other customers.
- Committee exhibit No. 26 is a confidential letter from the executive secretary to members of the general purchasing committee concerning the super discount. They were told how this discount could have been increased.
- 2549 Committee exhibit No. 27 is a letter concerning the maintenance of more than one source of supply, with not more than 75 or 80 percent of their paint supply to come from du Pont.
- 2550 Committee exhibit No. 35 shows the du Pont interest in United States Rubber. Irenee, Pierre, and possibly Lamnot, formed a syndicate with friends and relatives to purchase stock in United States Rubber Co. A Mr. Davis, who was president of a du Pont subsidiary, became president of United States Rubber, along with a board of directors of his choosing.
- Irene was dissatisfied with the tire department, and advocated leasing the tire business to Goodyear with Goodyear leasing its rubber plantations to United States Rubber.
- 2552 Shortly thereafter, GM surveyed tire companies with the idea of possibly buying a tire company to manufacture their own tires. Among

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those surveyed was United States Rubber. Committee exhibit No. 29 is a report by Charles E. Wilson in which he said the tire business was in a bad way, prices were bad, and he made recommendations which resulted in the idea being vetoed. The reasons were set forth for GM's decision not to go into the tire business.

2556 Committee exhibit No. 42 is the contract GM entered into with United States Rubber for a "very large proportion of their tires," fixed percentages were set. GM financed the purchase of rubber and cotton for the tires, and when the time came to bill for the tires, these costs were included in the price. GM purchased the raw rubber, charged United States Rubber up to 12 percent for use of the money for financing the purchase, then resold it to the rubber company.

2557 GM also was charged a billing price and a formula price.

2564 Committee exhibit No. 47 is a letter enclosing a check for \$1 million, which was to be paid to General Motors.

These transactions were kept confidential.

2565 Charles E. Wilson and F. B. Davis negotiated the rubber contract on behalf of the General Motors Corp.

Committee exhibit No. 44 is a letter to GM from Mr. Tompkins, manager of the tire department, showing special discounts.

2566 Committee exhibit No. 45 is another table of discounts.

2568 It has been stated that because of the favorable price GM received from United States Rubber it got a better price from other rubber companies.

Committee exhibit No. 48 shows when various price formulas were in effect.

2571 According to a chart which is Committee exhibit No. 54, United States Rubber provided from 60 to 70 percent of General Motors' requirements.

2572 Additional figures given on stock transaction covered in exhibit No. 4. Du Pont and General Motors joined together in working on the development of tetraethyl lead. Some of this work on tetraethyl lead was done by Standard Oil, also.

2573 "Sloan of General Motors, the owners of one set of patents, became a sort of mediator between Du Pont and Standard Oil on the manufacturing question, and on June 27, 1924 (committee) exhibit No. 55, Mr. Sloan wrote to Mr. Irene du Pont stating that he had given the thing a lot of thought, he was most happy and entirely satisfied 'to leave the matter entirely in your hands and the only thought that I have given in any other direction is simply to give due consideration to the psychological side and the opinion of our partners, the Standard Oil Company of New Jersey in the enterprise.'"

2574 Committee exhibit No. 57 is another letter from Mr. Sloan, intervening between Du Pont and Standard Oil when questions on pricing arose.

The Ethyl Corp. was to be only a distributor of tetraethyl lead. "The manufacture was to be done by Du Pont under a contract with the Ethyl Corp. The Ethyl Corp. was formed 50 percent each to Standard Oil and to General Motors, and they were the operating company and Du Pont manufactured under license from tetraethyl lead during the entire lifetime of the patent."

2575 Ethyl and Du Pont only supplied the demand for tetraethyl lead. Seemingly, there was no competition and no price competition between the two companies.

2578 Committee exhibit No. 61 shows the distribution of profits from tetraethyl lead for the years 1924-47.

2579 Antitrust action was taken against the Ethyl Corp., for illegal use of the patent resulting in illegal pricing and distribution practices.

2580 Committee exhibits No. 63 to 73 are documents showing that there was an effort by Du Pont officials to get their employees to buy General Motors cars and to buy GM cars and trucks for company use.

2594 Mr. Burns pointed out that General Motors had engaged in practices and arrangements in the motorbus business that involved it in criminal and civil suits brought by the Department of Justice in California. "This subcommittee is interested in determining what the facts were in this case and what the effect of the practices engaged in by GM and the other defendants were on competition in the bus industry. We are also interested in finding out what the effect of this litigation ultimately was with reference to the economics of the bus industry, and whether General Motors had obtained advantages which could not be dissipated by court action."

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Statement of William C. Dixon, former special assistant to the Attorney General, and chief of the west coast offices of the Antitrust Division, Department of Justice

2595 Statement of qualifications.

He will supply what information he can "concerning a criminal and civil antitrust case which the Government brought against the National City Line Inc., and other defendants, including General Motors Corp., in the United States District Court for the Southern District of California, Central Division, on April 9 and 10, 1947, respectively."

National City Lines Corp. is a holding company established in mid-thirties for the purpose of buying and operating local transit systems in various cities of the country.

2596 It was primarily a holding company, the result of a plan of the Fitzgerald brothers. When a local transit system was bought, that operation was kept separate from other operations through a separate subsidiary company.

Pacific City Lines was a wholly owned subsidiary operating on the west coast.

The money used in these purchases was furnished in part by suppliers. "In other words, the technique was to go out and secure from suppliers of buses, petroleum products and tires, money which would be invested in these companies, the subsidiary companies of which the operating and holding company was the National City Lines, Inc."

By making these so-called investments, these companies secured, in effect, all the business of the operating companies.

2597 Prior to the time General Motors became interested in the plan, these local transit systems had various makes of buses.

As far as he knows, the Fitzgerald brothers still operate National City Lines, although there are "very few subsidiaries left as such."

Prior to bringing the criminal and civil cases, Antitrust Division had received many complaints from former suppliers to the effect that they had lost business "because of the apparent closure of those markets to their products after National City Lines, Inc., acquired control of the local transit systems to which they had theretofore sold or were endeavoring to sell their products."

2598 Following a grand jury investigation, an indictment was returned in 1947 charging National City Lines and several other companies, including GM, with a violation of sections 1 and 2 of the Sherman Act. "Mr. H. C. Grossman, assistant secretary of General Motors was named an individual defendant in the indictment."

Count 1 charged that the defendants "had engaged in a combination and conspiracy to eliminate and exclude all competition in the sale of motorbuses, petroleum products, tires, and tubes to the local transportation companies then or thereafter owned or controlled by National City Lines, Inc., or any of its subsidiaries. Count 2 of the indictment charged the defendants, including General Motors, with having knowingly, willfully and unlawfully combined and conspired to monopolize that part of the interstate trade and commerce of the United States that consisted of the sale of motorbuses, petroleum products, tires, and tubes used by local transportation systems in those cities in which National City Lines, Inc., owned, controlled, or might thereafter acquire a substantial financial interest."

There had been quite an expansion after the combination was effected.

He believes this to be the largest holding company controlling and operating local transit systems in the United States.

The grand jury charged that as a result of this financial arrangement between the suppliers and National City, National City transit companies would purchase equipment and supplies from no other competitive companies.

2599 "The indictment alleged that the total amounts furnished by the supplier-defendants to National City Lines, Inc., for such purposes exceed \$9 million of which General Motors Corp. furnished over \$3 million, and that the total sales of motorbuses by General Motors to the National City Lines, Inc., operating companies for the years 1936 to 1946, inclusive, exceeded \$25 million. All of the supplier-defendants, including General Motors, were to receive stock in National City Lines, Inc., or its operating companies for the money made available."

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There was an agreement as to the percentage of bus business GM and Mack Manufacturing Corp. would get.

Arrangements between National City and GM were entered into in 1938.

2600 It was required that subsidiaries of National City Lines, Inc., negotiate separate contracts with the supplier-defendants. If National City disposed of any of these operating companies, the persons taking over the company were also obligated to purchase from these suppliers.

Generally the supplier companies received preferred stock in National City subsidiaries, although some common stock was issued to them.

A combination of these supplier companies had control of Pacific City Lines at one time.

2601 The first National City Lines contracts were with Yellow Truck & Coach Co., which was a subsidiary of GM. These contracts were taken over by GM in 1943 when all the assets of Yellow Truck & Coach were taken over by GM.

The defendants "vigorously opposed" both the criminal and civil cases. Although the Government protested, the criminal case was transferred to Chicago in 1947. Following this transfer, the California District Court dismissed civil complaint. This was appealed to the Supreme Court which "remanded the civil case to the district court for further proceedings." The district court then transferred the civil case to Chicago.

The defendants were acquitted of the charge of violating section 1 of the Sherman Act but were found guilty of violating section 2. "The Court of Appeals for the Seventh Circuit unanimously affirmed this conviction on January 3, 1951. The Supreme Court denied the defendants' petition for certiorari on April 3, 1951, thus bringing the criminal case to a final close. Various proceedings thereafter followed in the civil case. The district judge finally rendered an opinion in the civil case on September 15, 1955, which calls for a final judgment which should bring the trial of the civil case to an end in the district court."

2602 GM was to receive most of the bus business of operating companies controlled by National City at the time the GM-National City agreements were entered into, "and was to share 42.5 percent of all the business of any new local transit companies thereafter acquired by National City Lines, Inc., with the Mack Manufacturing Co." This did not apply, however, to the west coast area, where GM was to get "85 percent of all the business of these companies with the privilege accorded such companies of acquiring the remaining 15 percent of their bus requirements as used equipment if they desired to do so."

2603 Mack Co. did not, however, get all the bus business provided by contract.

The president of National City Lines told one bus supplier that he might as well look elsewhere for business as he would "probably have to buy" General Motors buses.

2604 Cited a letter from president of Pacific City Lines to General Motors which, in effect, asked GM permission to buy more than agreed quota of buses from another source, inasmuch as GM could not meet required needs at that time. GM agreed, but indicated that before any other outside purchases were made, they should be contacted. This deficiency was to be met after the war by increasing the quota of GM buses that were to be purchased.

2605 General Motors prices were to be competitive with other suppliers, but the president of National City Lines admitted "that the operating companies did not compare prices with other suppliers in making such purchases." National City had no recourse, however, as their contract obligated them to buy 85 percent of their requirement from GM.

2606 Money "invested" by suppliers was used to purchase more properties which would "greatly increase the motor coach requirements," as it was the policy of the Fitzgeralds "to eliminate the streetcar and to establish motor-bus systems of transportation whenever they went in and took over the local transit systems."

"Assistance was given to the American City Lines, which was the company which acquired the control of Los Angeles transit system, but the Standard Oil of California lending its assistance in making a \$5 million loan available from the Bank of America to complete that purchase.

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"The so-called stock investments of General Motors in the operating companies also placed it in a position where it and the other supplier defendants were able to and did assume the active management of some of the companies for temporary periods."

After conviction of the defendants in the criminal case, some of them disposed of their investments; some of the requirements contracts were abandoned or canceled, some expired. National City entered into a consent decree with the Government in December 1954, "in which it agreed to do its best to cancel the exclusive supply contracts then outstanding, and to request bids under certain conditions when new supplies and equipment were required by its operating companies." This in spite of the fact the contracts were illegal.

2607 Some of these contracts were extended even after the criminal case was on the docket.

2608 The criminal case did not operate so as to cancel "the illegal contracts between General Motors and the National City Lines, and between the other suppliers and National City Lines." Therefore, the Government proceeded with the civil case so as to have these contracts declared illegal.

The punishment for the criminal offense conviction was the maximum fine of \$5,000, imposed on the corporations. The individual defendants, such as the treasurer of Standard Oil and assistant secretary of GM, were each fined \$1.

2609 He thought this nominal fine was imposed because it was an "economic crime" instead of another type of crime.

It is one of the faults of our antitrust legislation and enforcement that economic crimes are not handled adequately.

"It is almost a gesture, nothing more, to indict a corporation without indicting some of the officials of that corporation, because a corporation cannot be put in jail. There is no personal stigma attached to it, and the maximum punishment is a \$5,000 fine at that time, now a \$50,000 fine, which some have referred to as a license to violate the law."

Sees no objection to amending antitrust law so as to impose the same fine on individuals concerned as on the corporations.

2610 Might also amend the law so as to prohibit corporations paying the fines of their officers.

The criminal case conviction established that the contracts entered into were illegal—not just that there was an illegal conspiracy—but did not constitute a specific finding to that effect.

The suppliers' attitude was "'We won't cancel them. We will wait until the court forces cancellation.'"

2611 No specific contracts were ordered canceled when the consent decree was entered.

Although GM now "holds no 'investment' in, and has no requirements contact with, any local transit company in the National City Lines system," Mr. Dixon suggested that the "greater part of all new bus equipment acquired by such companies will probably continue to be General Motors equipment, even under any bidding procedure which may be applicable to the purchases of buses in the consent decree before referred to."

2612 The criminal suit was filed in 1947 and convictions obtained in 1949, but the civil suit was not disposed of until 1955.

The Government did not object to proceeding with the criminal case ahead of the civil case, because it "could try the criminal case and lose * * * and then proceed to try the civil case and win it, without prejudice to its loss of the criminal case.

"However, if it won the criminal case, then it had the advantage of winning that case and presumably effectively and quickly disposing of the civil case. The effort to get this quick action was unsuccessful, however, because of the "clogged docket in the district court at Chicago at that time."

Although National City agreed to a consent decree, the other defendants refused, "claiming there was nothing which could be accomplished by such a decree since they had sold their stock and * * * the contracts which the Government complained of were no longer in effect." It was their contention, therefore, that the issue was moot.

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2613 In addition to cancellation of contracts and disposing of stock, the Government wanted National City to purchase equipment in the future by competitive bidding, and general injunctive prohibitions against resumption of these practices. However, since GM testified it did not intend to enter into similar contracts in the future, there was no reason to make such an order against them. And since the other contracts had lapsed, there was nothing to cancel, except two which involved Standard Oil of California and Firestone Tire & Rubber Co. September 19, 1953, these contracts were ordered canceled if they were still in effect.

There is a question as to whether the consent decree actually required competitive bidding for buses in the future.

2619 There is doubt that the conviction in the criminal case and the judgment in the civil case will really restore competition for National City Lines' business.

2620 A giant corporation, because of its varied resources, can thwart anti-trust procedure by use of dilatory tactics.

For example, in this one case this market has been closed to competition for 18 years. " * * * as a practical matter, the court may require certain things, but if you have been doing business with someone for 18 years the chances are that you are going to be a little reluctant to change to someone else unless you are forced to do so."

WEDNESDAY, NOVEMBER 16, 1955

Statement of Frank R. Fageol, chairman, board of directors, Twin Coach Co.

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2623 His company manufactures automotive engines and aircraft assemblies; they formerly made buses. The first one was introduced in 1921.

2624 He founded what was then the Fageol Motors Co., and has been with the company throughout its existence.

As far as he knows, they were the first ones to turn out the transit bus, which is the standard today.

At this time, they merged with A. C. F. Brill. Along with Fageol went the Hall-Scott Motor plant at Berkeley, Calif., who built the engines for Fageol.

The operations were then moved to Detroit and Philadelphia, and the Kent, Ohio, plant was left unused. In 1926 he severed connections with A. C. F. Brill, bought out Twin Coach, bought the plant and facilities from Brill, and started making buses again in Kent.

2625 When Twin Coach was organized, General Motors, A. C. F. Brill, the White Co., the Mack Co., and Twin Coach were engaged in the manufacture of quality, transit-type buses.

Before World War II, their sales ran from \$6 to \$10 million annually. In the postwar period, when the pent-up demand was being filled, income was about \$25 or \$30 million annually. After 1947, the demand for buses dropped off considerably. For one thing, there was not the need for buses that there had been previously; for another, GM's share of the business began to increase.

2626 Listed competing companies and locations of their plants.

2627 Most of the statistics showing the production of these companies cover the manufacture of urban rather than intercity buses.

2629 Figures given showing percentage of market held by different production groups.

2630 These figures indicate that through 1951, at least, there existed a reasonably competitive situation. However, the situation changed radically after that, General Motors manufacturing 80 percent of the buses made. Seemingly these figures include intercity as well as urban vehicles.

Listed the companies that are no longer making buses.

2631 One reason he gave for GM's dominant position is the capital GM invested in National City Lines, one of the biggest bus operators in the country, has resulted in National City and its subsidiary companies using General Motors buses almost exclusively. Another reason was that "in the early days they had secured the account of people like Public Service of New Jersey," which is another big operator. There was no investment in this instance.

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"The other company which General Motors helped finance in the early days was the Greyhound system. They are the biggest in the intercity field. They also were standardized and have continued to buy their (GM's) products."

He has no personal knowledge, but understands that in the early days preceding General Motors, in the "John Hertz days of the Yellow Coach," there was financial assistance given to the New York Omnibus Co.

These big companies, such as National City, Public Service of New Jersey, and the New York companies, take over half of the bus production. GM's financial assistance in earlier years has enabled it to have this business.

Although the Government brought suit against GM, National City Lines, and others, and has obtained court decrees, Mr. Fageol does not believe the field will be opened up to competition. "Because of the standardization of those companies on General Motors buses, I think it will have no effect on their future purchases. As a matter of fact, since that decree was entered, that has been proven."

2632 After using one product for 15 years or more, maintenance shops are set up to handle that one vehicle, "and mixed fleets would not be economically very wise."

There are other factors which have enabled GM to increase its position in the market while others have decreased. Although he could not prove it, he said their "conviction is that it is through the use of their great economic powers of being able to influence banks, directors, railroads for freight, and that sort of thing; because we had, prior to this late period, a number of good accounts that were standardized on Twin Coaches, which the management wanted to continue, so they told us, and through action of the board and so forth, they switched. There is no letup of that.

"There is no account too small apparently for them to want to dominate, and which they do dominate when they get ready to do so. The fact of the 80 percent is the best evidence I can offer you on that."

2633 He does not think that superior quality of engine and/or the bus as a whole has given GM the superiority it enjoys.

It is entirely possible that any industry using motors, like airplanes, could also be dominated by one company.

Described the manner in which a manufacturer procures parts and manufactures the finished bus.

2634 He also has the Fageol Products Co. which manufactures engines. It has been in the business about 15 years.

GM makes some of its parts, buys others from outside sources, and gets others from other divisions of the corporation.

His buses and GM buses were comparable in price, and no account which has been lost to GM has said there was anything wrong with the price he charged or the quality of the bus itself. "The reason they gave us was that they preferred it."

2635 They had no difficulty in getting recommendations for purchase of their buses from the managers. "The excuse the management gave us was that the directors had put pressure on them to buy General Motors."

Eventually, they couldn't sell enough buses to keep the factory going. At that time they employed about 800 people. Since then they have employed 200 to 300, because they "have not yet been able to develop other products" to take the place of buses, although they are trying.

The Flixible Co. bought their equipment for manufacturing buses. They had not been hurt as badly as Twin Coach because their product was used for intercity business. They also took over what business Twin Coach had at the time.

2636 Read from a report made to his employees in 1953, telling them of the plight of the business.

2637 He felt the problem of what to do about his business, and others like his, is too complicated to offer a pat solution.

He said, however, one possible remedy might be to prevent public bodies, such as the Federal Government, from placing more than 50 percent of any sizable order with 1 company.

He believes that if the smaller companies "could secure free, equal competitive advantages," then they would get the business they should have.

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2637

Free enterprise should be maintained, but not to the extent of a giant being able to force smaller but efficient companies out of business. If it can continue without some sort of check, "they finally become as big almost or bigger than government." If that point is reached, "there is nothing government can do but take them over, and then you head right into socialism" which very few people want.

Statement of Charles W. Perelle, president, American Bosch Arma Corp.

2640 Statement of identification and background.

2641 He had been president of ACF Brill prior to becoming president of Bosch Arma. When asked why he left Brill, he said: "The ACF Brill Co. and the American Bosch Co. are governed or controlled by the same banking fraternity, and as we had made the decision to go out of the bus business and had by and large cleaned up our problems and our program at Brill, I was asked by our banking interests to go to the American Bosch Arma Corp. which at that time was having some problems." Gave additional details.

He could not say exactly when Brill stopped making buses. Its situation was similar to Mr. Fageol's—as orders decreased manufacture tapered off.

Told the committee how the Hall-Scott Motor Car Co. was spun off from Brill.

2642 The physical assets of Brill have all been sold.

"The ACF Brill Co. as such was converted into cash, and that cash has now been employed in other fields, and I believe a merger is taking place at the present time of several independent grocery chains which will eventually constitute the residue of the ACF Brill Co." The corporation has not yet been dissolved.

2643 Their annual sales were "quite varied and spasmodic," especially after 1949.

They sold buses for military use as well as civilian.

2644 Their income from intercity buses was about the same as that from urban buses.

When he left Brill, GM was getting substantial share of the business. It was their inability to get enough business to keep operating at a profit that was probably the most important reason for Brill's getting out of the business. Brill had sold buses to transit lines that were later taken over by National City Lines.

After these transit lines were taken over by National City, ACF Brill tried to sell buses to them with very little success. National City Lines did, however, buy replacement parts from them for the equipment which was already on the streets.

2645 Standardization is probably the biggest reason for the situation. National City standardized on GM diesel buses, which Brill did not make. They only made a gasoline bus.

Knows of no transit companies taken over by National City after he joined Brill.

2646 He is aware of the interest General Motors had in the Greyhound Co., but understands they divested themselves of that interest.

He believes it economically feasible for a transit company to have more than one line of buses. Explained why.

2647 Once a company standardizes on one line, it is very difficult for another company to break into the business.

They had sold buses to Southeastern Greyhound which, at that time, was not a part of the Greyhound Co. They sold "very few" buses to the Greyhound Co., even though they had tried.

Southeastern Greyhound had standardized with Brill equipment, and GM didn't break in until Southeastern merged with "the big Greyhound Corp., at which time we no longer received any business from Southeastern Greyhound." This was about 1951.

2648 It is his belief that Greyhound's standardizing with GM buses goes back to the original financial interest it had in Greyhound. Mr. Perelle does not know for sure, but believes GM had requirements contracts with Greyhound.

While he was with Consolidated Valtee, an aircraft company, the company was asked by Greyhound to design a bus for them. Thinking they might go into the bus industry after the war, they started the project.

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- The project was dropped after it was found "there were some sales commitments made by Greyhound to General Motors."
- 2649 Consolidated Vultee did go into the bus business after the war when it bought a controlling block of stock in ACF Brill.
- Greyhound may have been interested in having Vultee work on the project so as to have the knowledge gained in aircraft manufacture applied to bus manufacture.
- 2650 They thought the air-cooled engine they were developing would be in some ways superior to the diesel engine used in the GM product. The question was raised as to whether GM's power was, therefore, sufficient to prevent the development of a better engine.
- 2652 Douglas Aircraft Co. was working on development of a bus at that time, too, in competition with Consolidated Vultee. He does not know the reasons, but they discontinued their plans also.
- Since Greyhound is "by far" the largest purchaser of intercity buses, any manufacturer that did not have access to that market would be seriously handicapped.
- He believes General Motors has many advantages in the bus business because of its size. One of them is the "control of freight on a reciprocity basis." Many railroads also own buses. He knows of one specific case where they lost an order because the railroad preferred GM because of the freight business. This involved the New York, New Haven & Hartford line.
- 2653 He has had long experience with railroads and even considered the possibility of becoming president of American Locomotive.
- 2654 He decided against it when he saw the pattern that was set in the locomotive industry, with GM controlling about 60 percent of the locomotive business. He felt GM had this large share of the business because of their shipping so much freight.
- Another advantage GM had in the bus field because of its size was its ability to maintain warehouses throughout the country, which smaller companies were forced to discontinue as their business decreased.
- It is necessary to finance a fairly large volume of bus business, "and ability to carry that paper is a real financial problem." There are reasons for its being particularly tough in this industry.
- 2655 He "would think" GM was in a better position to meet this financing problem because of its size. He knows that GM could offer more attractive financing than Brill.
- It could very easily be the determining factor as to whether they or GM got the business. He knows they lost business because they were unable to provide financing.
- 2656 They were quite successful in competing with GM for Government business which was bid for competitively and according to specification.
- Statement of Stanley L. Green, president, Southern Coach Manufacturing Co.*
- 2656 Statement of identification and background.
- 2657 He owns about 70 percent of the business, and was one of the founders. They have "a little parts company that is a separate corporation."
- They make the city transit-type bus. They manufacture the body, seats, and windows, and buy engines, transmissions, and the "powerlines."
- 2658 They restrict their sales efforts primarily to the South and Southwest. They compete with GM, Flxible, and Mack for business, but their prices are 5 or 6 percent lower. Their capacity is about 200 a year.
- A chart was presented showing that Southern had increased its bus business since 1950. In 1951 and 1952 most of their business was with the Government.
- 2659 They have two major problems in attempting to compete with GM. One, they are such a small company and so many larger ones have gone out of the business, "there was quite a feeling that we couldn't last either, and no one wants to buy a bus that is going to be an orphan." He thinks that has cost them "quite a bit of business."
- They have also lost business because of their inability to offer financing. He knows of two instances in which this business was lost to GM.
- Recently they have not solicited business unless they knew the company was in a financial position to obtain bank financing.

- Page
2660 GM can fulfill special orders for quick delivery that smaller companies cannot.
- Standardization has some economic value, but he thinks that is exaggerated in many instances. It works for them and against them.
- 2661 Some companies and municipally owned transit systems ask for bids on equipment. "Others apparently are not interested in what we charge for a bus or what we have in it, and that same thing not only applies to us, but to Mack and Flexible."
- A shock absorber that was developed by Delco Products, a division of GM, is not available to Southern. They also have difficulty in obtaining torque converters.
- 2662 He thinks the competitive situation is such that he can continue to exist, even with his very small production.
- They are trying to diversify so as to have a cushion for slack periods, with some success.
- Statement of Thomas P. Butler, vice president, the Flexible Co.*
- 2663 Statement of identification.
- Their primary business is buses, although they do make some other products. They now manufacture both city and intercity types of buses; prior to 1953 when they took over Twin Coach, they manufactured the intercity type.
- They took over Twin Coach because the urban bus business was worsening and Twin Coach thought they might be interested in "getting into the transit business without having to start from the ground up." This might make a satisfactory situation for Flexible. Their intercity bus business was "getting also more spotty for an entirely different reason than the transit business."
- They manufacture the body but obtain components from firms such as Timken, Westinghouse, Fageol Motors, and GM divisions.
- 2664 Mergers have drastically curtailed the number of operating companies since the 1930's so that now "there are perhaps not over about a tenth as many individual operations in the United States on intercity buses as there were 15 or 20 years ago." Before these companies began to merge, the "market supported a number of more manufacturers than are in business today." Now, the "control of purchasing is centered in a lot fewer places, and, as a consequence, the larger and more aggressive companies" can get business the smaller firms cannot.
- They produced a maximum of 800 or 900 intercity buses.
- Most of the companies that produced intercity buses are still in the business "in some manner."
- GM is their principal competitor, but the fact that it has a virtual monopoly of Greyhound business helps them in obtaining business from the Trailways Co., as they "would prefer, everything else being equal, not to have to deal with General Motors." Trailways is Flexible's largest customer.
- 2665 There is a great deal of difference between the type of competition found in intercity business and city transit business.
- Their major problem—their only real competition—is General Motors.
- There have been specific instances where they have lost business to GM because they could not offer long-term financing. It is his understanding GM handles this financing through its YMAC division.
- When Flexible handled financing operations in the past, they used GMAC, another GM subsidiary. Entirely they have used banks more frequently for intercity coach financing. He said: "We have had instances where GMAC turned down deals that we offered them, and they were in turn sold by General Motors and financed by them on the deal, sometimes on even longer terms than we would have been able to get for the customer."
- 2666 He agrees that the trend indicates that it is more difficult to obtain financing for transit coaches from local banks, especially in the medium-sized and smaller cities. Some of these cities are beginning to ask for the lease of equipment rather than outright purchase, which is an even more difficult problem in financing.
- YMCA provides more liberal terms for financing sales of GM buses than GMAC does for outside companies like Flexible.

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2667

Their contacts are usually with management people. Mr. Butler knows of instances where management has indicated that they would recommend the purchase of Flexible coaches, "and in several instances substantial orders have been reversed by somebody on up in the active management of the companies, in both privately owned and municipally owned operations." Usually their reasons appeared flimsy.

The higher level he referred to was a board of directors. Frequently these boards have representatives of local bankers on them, which might have some influence on the operations.

Mr. Butler continued, "I recall one instance where the general manager of one of the large companies in the United States told me himself that they were in the market for buses, he presumed they would buy GM buses, and that they would buy them without having to come to him for a recommendation. He made the statement, 'They will just go to my bankers.'"

2668 When a company draws up specifications for a type of bus it wants, they frequently are so drawn that you know in advance who is going to get the business, even if invitations for bids have been sent out.

It usually happens that these specifications fit the GM bus rather than his; but they might have no real effect on the efficiency of operation of the vehicle.

2669 It cannot be denied, however, that the purchaser of a bus has the right to ask for whatever design he wants.

They are also handicapped by the fact that GM can make delivery on sizable orders much faster than they.

2670 They use gasoline, diesel, and propane engines.

They have used GM diesels occasionally, but only when they could buy them, "you might say, bootleg style through the dealers." They cannot buy them direct from GM. They have had the experience of "placing the orders with the dealers, and if the Truck and Coach Division finds out where he is going to resell those engines, they just don't ship them to him * * *"

2671 In their attempts to buy diesels direct from GM, they have had two kinds of replies: one, that GM's business "was so heavy that they couldn't take on any additional responsibilities for deliveries;" second, "they have said they have taken it up and it was a matter of company policy that they did not want to sell the coach to us because it would make them liable to open the thing for sale to others."

Mr. Butler has never discussed free enterprise with General Motors. Quoted a letter from GM turning down their request for GM gasoline engines.

2672 Quoted from a letter from a dealer telling Flexible they would be supplied with GM diesels.

Another letter from the supplier concerning a shipment of GM diesels.

2673 A letter from the supplier saying he had been directed by GM to refuse a Flexible order.

2674 Cited a memorandum of a phone call from the dealer who had told them the customer "who was intending to receive equipment from you (Flexible) which was powered with a GMC diesel engine has dropped the information in such a way that it got back to General Motors. I just received a telephone call from the Detroit office stating that orders had come down direct from Mr. Wilson who had a meeting with other officials in Chicago that we were not to deliver any engines to the Flexible Co. as they are competitors of ours."

2677 Additional correspondence concerning GM's refusal to sell diesels. In this case, the man who was going to sell the diesels to Flexible had had to obtain them from the overseas division of Detroit Diesel; they had actually come from Mexico.

2678 Again, GM did not want any of its engines to reach the hands of a competitor.

He does not believe any GM customers have had any difficulty in obtaining GM diesels for replacement.

2680 Senator O'Mahoney believes the "Mr. Wilson" referred to in the memorandum is the present Secretary of Defense, Charles E. Wilson.

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2681

Mr. Burns made an opening statement concerning the hearings to be held on General Motors' acquisition of the Euclid Road Machinery Co., of Cleveland, Ohio. He said, "This acquisition has the characteristics of both conglomerate and vertical integration by merger," and may be a violation of the Clayton Act.

2683

Senator O'Mahoney thinks the record shows that "economic concentration is proceeding at a pace which must alarm everybody who believes in local control over business, and the preservation of real opportunity for free enterprise, because enterprise cannot be free if the consistent growth and expansion of a few large units is permitted to continue.

Statement of Charles Raymond Boll, Jr., vice president, sales, Cummins Engine Co.

2683

Statement of identification.

Gave the history of the company, which has manufactured diesel engines of various kinds for many years.

In 1954 their gross sales were approximately \$59,200,000.

They make high-speed diesels for use in trucks, buses, construction equipment, mining equipment, ships, etc., and employ about 3,000 people.

2684

Their principal competitors are General Motors, Caterpillar Tractor Co., Waukesha Motors Co., Hercules Motors, Buda engine division of Allis-Chalmers, International Harvester, and the Mack Truck Co.

2685

Their position in the industry varies according to the particular segment of the industry involved.

Their business has been increasing. Also, he feels they are able to compete successfully with the larger companies that have diesel divisions.

They began selling diesels to the Euclid Road Machinery Co., Inc., in 1936; they still sell to them today. Euclid makes off-highway earth-moving equipment of three types.

2686

Listed some competitors of the Euclid Co. Cummins sells engines to all of these companies with the exception of Caterpillar.

Euclid is regarded as one of the major manufacturers of dump trucks.

To the best of his knowledge, Euclid's practice prior to 1953, when it merged with GM, was to designate the kind of engine they wanted in their equipment, usually at the customer's request.

2687

In their sales efforts, Cummins tried to reach both the manufacturers of equipment and the purchasers.

2688

Prior to 1953, Euclid equipped its products with Cummins engines, GM engines, and one other make.

After it was taken over by GM, Euclid equipment was designed so as to use the GM engines. "There has been a change in one model just recently, where they are working to install our engine in that particular machine."

2689

If a purchaser wanted to use Cummins engines in the newly designed Euclid products it would pose quite a problem, as they are designed around GM engines.

If the necessity for a speedy delivery were a major factor in a purchase, it would involve a delay if the purchaser asked for a Cummins engine in a Euclid product, so he might take the equipment as is rather than wait for the installation of a Cummins engine. Boll said Euclid stocks Cummins engines so as to facilitate speedy delivery.

2690

They maintain their own distributors and dealer sales and services organizations throughout the country.

The new Euclid products are in part completely new and partly redesigns of products made by Euclid previously.

It is doubtful if installation of the Cummins diesel would add much, if anything, to the cost of the equipment. In the case of other manufacturers, their equipment is designed, in general, so as to take either Cummins or GM engines.

2691

Since GM acquired Euclid, it has started work on two entirely new implements. It is his understanding that since the merger, Euclid's prices have gone up, but his have gone down.

Cited figures showing decrease in sales to Euclid since the merger.

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- 2692 The Allis-Chalmers Co. acquired the Buda Co., a competitor of Cummins, in 1953; they also acquired a company called LaPlante-Choate, a customer of Cummins, in late 1952. Within a couple of months after LaPlante-Choate was acquired by Allis-Chalmers, they stopped doing business with Cummins and replaced their engines with Buda engines. Cummins has lost two customers in the bus industry—ACF Brill and White Motor Co.—which meant the loss of a “substantial quantity of business annually.”
- 2693 His company was one of the early developers of diesel power. They started manufacture of diesels for use in trucks in 1932; to the best of his knowledge, GM didn't make them until much later. Euclid began using GM engines in quantity around the end of or immediately after World War II. Prior to that, they used mostly Cummins engines.
- 2694 Outlined the recent improvements made in Cummins' line. Cummins products are distributed nationally, even worldwide. Their market, as well as their competitors', has increased considerably since the war.
- 2695 Because of the possibility of a stepped-up roadbuilding program, their outlook is optimistic.
- 2696 He thinks there has been little change in the relative position of the top three companies in the diesel field; but thinks the decline of sales to Euclid is permanent.
- Statement of Raymond Q. Armington, general manager, Euclid division, General Motors Corp.; accompanied by Robert A. Nitschke, attorney*
- 2697 Statement of identification. Gave history and background of the earth-moving equipment industry. They have exported equipment since 1945.
- 2698 He had shown the committee pictures of products developed prior to Euclid's acquisition by GM. Follows with pictures of equipment developed since that time.
- 2701 His father had a part in founding the Euclid Crane & Hoist Co., the predecessor company, in 1907.
- 2702 After some false starts, the company finally developed a tractor-drawn scraper, but found they “could not hope to distribute our limited line through a dealer organization established to handle our products alone. It was necessary to cooperate with one tractor producer and his respective dealers rather than attempting to set up our own dealers. This plan of working with a single manufacturer's dealer organization proved to be a successful one.” The cooperating manufacturer was the Caterpillar Tractor Co. Their arrangement lasted for 6 or 7 years, until about 1933.
- 2703 They were given assistance in development of new and better products by larger companies with more engineering and financial ability. This took quite a bit of perseverance and courage in the years 1933-38. “During the early thirties, the organization had difficulty paying its debts and was forced to borrow money, using a large part of its accounts receivable as security.” As their self-powered hauling unit became acceptable, they were competing with crawler tractors, and thus decided to end their dealer setup with Caterpillar. They appointed new dealers when they could and in some areas the company “resorted to direct selling to customers.” When volume dropped off in late 1937, they found themselves in a precarious financial condition and a creditors' committee was formed to “take over management of the company and try to solve the problem.” After World War II they went into a “major expansion program” by borrowing from local banks.
- 2704 “Even though the percentage of borrowing to net worth had dropped from 50 percent to 42 percent, it was becoming increasingly difficult to get out of debt.” Also, it was still very difficult to get good dealers.
- 2705 In 1953 one-third of their dealers sold 81 percent of their machines. “Sometimes a complete year would go by in a dealer's territory where he had no big project, and he would not even sell one machine.”

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There are only 7 other manufacturers of off-highway dump trucks, which are specialized machines; only 1,500 are made each year. They are the Dart Truck Co.; Mack Truck; Kenworth Truck; LeTourneau-Westinghouse; Caterpillar, through their association with the Athey Products Co., who made trailers for use with them; International Harvesters and Allis-Chalmers.

With this limited production "it was most difficult to support development work in other lines of earth-moving equipment and even in our own limited field of wheeled machines." The need for getting into the crawler tractor field, "with a general line of products to support product research and a more complete sales organization, became more and more obvious."

In 1952-53 Euclid was a small company in the industry, having about 5 to 6 percent of the business.

In the early days, they had competitors on and off trying to break into the field, but Euclid was able to do better.

2708 They had about 50 to 75 percent of the market of the specialized dump trucks mentioned earlier; up until 1950 this was substantially all of their total business.

They were attempting to clarify the record as to how much business Euclid did each year.

2709 There were several products in earth-moving business they did not make.

2711 Figures on total volume of net sales since 1945.

Most of the increase from 1945 to 1953 was in the field in which they specialized, the dump-truck business.

It is his assumption that there was a lot of defense business in the 1951 figure.

2713 By 1952 their principal competitors were making off-highway trucks, so Euclid, if it wanted "to grow and succeed in its business," had to get into crawler tractors.

2714 At the time of the merger, competition was increasing but outlook for the industry was good.

Their income in the 2 years since the merger was about \$108 million. A large part of this was from the dump-truck business, but there "was an increasing percentage of scrapers in that period," and new products were in the picture in more recent months.

2715 Euclid had about 100 percent of the loader business. Told the sub-committee how they got into the loader field.

In 1952, the net worth of the three major crawler-tractor manufacturers as compared to Euclid was: Allis-Chalmers, \$188 million; International Harvester, \$680 million; Caterpillar Tractor Co., \$152 million; Euclid, \$16 million.

2717 In 1952, when they wanted to expand into the crawler-tractor field, they were unable to do so because of the tremendous investment required—about \$30 million. "It was just not in the cards to think that we could get this kind of money on our own. Lack of finances, together with the limited line of products and resulting lack of a strong distributor organization, was putting Euclid at a serious competitive disadvantage. The Euclid management was faced with the simple fact that it had not been able to keep up with the fast-growing construction machinery industry and found its position, limited as it was to the narrow segment of off-highway hauling equipment, very insecure for the future."

2718 "In late 1952, one of the major crawler-tractor manufacturers approached us to discuss the possibility of joining with them. Euclid was interested but after several discussions the tractor manufacturer decided against it." This was the International Harvester Co.

Since this seemed to be the solution to the problem, he "approached another crawler-tractor manufacturer and also General Motors through their Detroit Diesel Division." They had purchased GM diesels, and GM had the Allison torque converter transmission, "the most advanced means for transmission of power in this heavy equipment."

Actually, he did not try to persuade the first manufacturer to merge with them. This manufacturer approached them, because his dealers "were at such a competitive disadvantage against the Caterpillar dealers" that he wanted to have a "rubber-tired line of products as well as a crawler-tractor line."

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This merger did not place because the tractor manufacturer lacked the money.

He said that in the case of the second manufacturer, "I never mentioned in our discussion the possibility of our merging with them or being acquired by them. It was merely to be sure that we were exposed to the possibility or to be sure that no possibility was overlooked.

"I was not out actually trying to peddle our company. I just wanted to be sure that if there was some feeling on the part of this tractor company that they would like to go ahead, that they had that opportunity to raise their point, and they did not do so, sir. It was not discussed." This company was Allis-Chalmers.

2719 He did raise the point, however, with GM.

About 6 months after the exploratory talks with GM, Euclid renewed the discussions and General Motors acquired Euclid. This second discussion was occasioned by Allis-Chalmers' acquisition of the Buda Co.

2720 The first approach to GM was relatively fruitless but, Mr. Armington said, after a 6-month period GM thought it was a good thing. Senator O'Mahoney was trying to find the reasons for this change in thinking of GM people.

2721 Armington believes it was "the facts of the industry" that impressed them.

In talking with GM officials since the merger, he thinks "they saw a tremendous future in that thing, and saw a chance to make an important contribution in the overall construction machinery industry, and that this was a means for them to get in and do that."

2722 In the final transaction, there was an exchange of stock, with Euclid people getting "slightly less than book value." Book value was about \$18 million; about a year earlier their net worth had been around \$16 million.

The formula for stock exchange that was agreed upon was based upon the "relative earnings of the two organizations" which, in turn, was based upon a "balance sheet figure as of July 31."

The market value of the stock that he got in 1953 is worth "about two and a half times what it was at that time."

2723 Mr. Armington said the reasons for GM's giving them stock of such great potential value was "based on their prospective earnings of the two organizations." In GM-Euclid discussions concerning "the advantages and possibilities of the two organizations getting together, it was certainly obvious to Euclid that that was the right approach * * *."

They did not, however, have to persuade GM that it was the thing to do. "The facts persuaded General Motors that it was a desirable thing to do, and they had the vision to go ahead with it * * *."

"As far as arriving at a formula for exchange of shares is concerned, that was arrived at very simply with the understanding that it would be on the basis of earnings."

The subcommittee was still attempting to find the reasons for GM's change of attitude about the merger. Mr. Nitschke suggested bringing in the GM executive that handled it so that he could be questioned "directly." The chairman, however, felt Mr. Armington should be able to answer the questions.

2724 Armington added: "I found out by hearsay while we were going ahead, and later by fact, that is that General Motors had been undertaking a very thorough market analysis of this whole field, and that had been going on at the time when we were acquired; that had been going on close to a year." They did not show it to him however. He did not see it until "long after" they were a part of the corporation.

Senator O'Mahoney reviewed "some facts" to which he had testified.

When he took over as manager (after merger) GM expected "the Euclid organization to build a broader line of products to occupy a more competitive, more important, position in the industry and to develop new products, using the ability of the General Motors organization, their research departments, the technological advances that they had made, and just do the best" they could. Their assignment was "to get into the industry."

2726 You just do not get into the whole field at once. "You take one product at a time and work on it."

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The subject of Euclid's becoming a "captive market" for GM's diesel engines was not discussed. "There was no attempt made then or since then by General Motors to influence the Euclid Division in the selection of engines for the products that they had made up to the time * * * that Euclid was acquired by General Motors."

2727 In attempting to explain what he meant, Mr. Armington said: "To answer your question, I would like to divide it into two parts: The old specialized line of products that Euclid made prior to the acquisition by General Motors, both the Cummins engine and the General Motors engine, are offered as optional equipment."

After acquisition by GM they made a small 10-ton truck on which no option was offered, only the GM engine, as "there was no satisfactory alternate engine available."

"The FD truck we offered the Cummins engine and the GM as optional equipment." He listed other old models that carried options of either GM or Cummins engines. That was the policy followed after the acquisition "on engine policy for the old line of equipment."

2728 They will not offer choice of engines on new models, however. He explained: "If we are going to be competitive we have to standardize on one engine, on machines that are built in production quantities on repetitive runs."

"Now, the reasons for that are that the cost of producing just a single engine is less, the design becomes more complicated if you have to provide for optional engines; the scheduling problem in the factory is more difficult if you provide for optional engines; the inventory is higher, more factory space is required; it is more difficult for the dealers to stock machines and estimate their requirements if they have to guess it out between two types of engines."

In the "old specialized field that Euclid was in" you could offer a choice, but it cannot be done in the mass-production setup.

He then explained why they selected GM diesels for their new lines.

They still offer a choice of engines for use in the dump trucks which constituted the bulk of their business in the beginning, even though there have been changes in the models.

2729 Equipment has to be designed differently to accommodate different kinds of engines.

Dump trucks are not made in volume the way scrapers and crawler tractors are.

2732 Inserted figures showing comparison of engines purchased by Euclid from 1947 to 1955, inclusive.

2733 They showed that Euclid used more Cummins engines than GM diesels until 1955, then more GM's, the reasons being customer choice and because GM had built only a 190-horsepower engine through 1952. They experimented with Detroit diesel's 300-horsepower engines for "several years" and added them to the line in early 1953.

He thinks there has been a change in the method of selling equipment that would account for the recent increase in customer preference for GM diesels.

One of the reasons is that although many of the Euclid dealers carried other lines, they had no access to Detroit diesel parts until after the acquisition.

2734 Another factor that might make it more difficult for Cummins to get business is its inability to have its parts in the hands of the dealers who sell Euclid equipment. This is Cummins policy.

The LeTourneau dealer organization, however, does sell Detroit diesel parts, and was doing it before Euclid was.

Even with this advantage, Euclid still led them in sales in the rear dump haulage field.

2735 Mr. Burns told him: "We are trying to evaluate how important it was to get these GM parts into the hands of dealers in order to help the dealers sell Euclid equipment in view of the fact that the record shows that they successfully had been able to sell your products when they did not have them, and the difference being that this would seem to be a handicap on the ability of Cummins to dispose of its engines if it is an advantage to the dealer to have GM parts."

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Another change with their dealers was in handling other lines of equipment, especially International Harvester. Some dealers have chosen one or the other of the lines, some still handle both, not having made a decision yet.

Prior to the merger, Euclid sold to its dealers on both terms and cash basis.

2736 They offered a cash discount, but after the merger, they "followed the General Motors policy of eliminating the cash discount, selling on a net basis," with the prices being adjusted so that "the amount that the dealer paid for his model would be the same." However, this practice was not instituted until a year after the merger.

There have been some price adjustments since that time, but he pointed out there had been no price revisions in the Euclid line from about 1950 until early 1955.

Mr. Burns asked if this change in discount policy caused any dealers to buy on credit. Mr. Arrington replied: "Euclid does not offer credit as such. The YMAC credit plan is available to them if they choose to use it. It is another service that Euclid is now able to offer to the dealers." YMAC is a division of GM, offering both customer financing and floor-plan financing.

2737 Euclid had also offered a floor plan for dealers. It is a plan whereby a dealer could have a product for several months without making complete payment.

Previously the dealers had financed their purchases through local banks and national credit companies. He thinks some of them still do.

2738 He thinks the financing arrangements with YMAC have had very little influence on Euclid's increased sales.

At the time of the acquisition, he learned that GM "was engaging in research and development work in the off-the-road equipment field * * *" and the staff that had been working on this project was transferred to Euclid.

"The General Motors-Euclid organization was almost immediately able to double crawler tractor horsepower with its 390 horsepower TC-12 and create earth moving ability of an even greater increase."

2739 In view of the need for an accelerated road-building program, "the technological contribution which General Motors has already made in reducing the cost to the Nation of this tremendous construction program is obvious."

Twenty-four percent of the products shipped in 9 months of 1955 are new products developed by the Euclid-GM teams.

It is his opinion that production of this large Euclid crawler tractor will stimulate the other 3 manufacturers to make heavier, more powerful tractors. "Certainly the stimulation of this field is going to result in lower costs of dirt moving." Euclid could not, by itself, have made this contribution.

2740 Figures on sales and profits before merger, showing a drop in percentage of profits. Euclid found it increasingly difficult to compete and, probably, the same was true of the other small firms in the field.

They have "excellent" relations with their dealers, but he is not familiar with the type of contract they have except that it runs for a year.

2741 Discussed some pioneering achievements of GM.

2742 Discussing experiments, he said their engineering budget since acquisition has been 10 times what it was.

Since operating as general manager of a GM division, he has "grown familiar with the General Motors management viewpoint. They are always looking for opportunities for a technological contribution. An example of that is what was done in the case of Electro-Motive."

He said, "Naturally, it would be fine if small family companies like Euclid could continue to stay small and independent and at the same time do the big things required in their industry. The fact remains that Euclid had just grown into a market and an industry which required the finances, resources, and facilities of a larger organization."

2744 When he headed the independent company he had control of policy, but he was responsible to a board of directors. Under the present arrangement, the actual operation of the Euclid division is left pretty largely up to him, but is finally answerable to the executive committee of the board of directors.

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2745 He was asked if a small company like his had been, were to find itself in a similar predicament, should it, too, join with General Motors. He said, "I think when a company finds itself out of place, if a big company is in a business that is logically a small business, it will find that it can't compete. When a small company finds that it is in a business that is really the logical place for a big business, it can't compete."

2746 He believes there is a place in our free-enterprise economy for both small and big business and that "they will sort themselves out, naturally, under the laws of supply and demand."

Most of their profits from 1946 to 1952 were plowed back into the company with the added help of a little additional capital.

Statement of Peter Reed, attorney at law

2747 Statement of identification. He had been attorney for the Euclid Co.
2748 He had also been a director of the company.

Prior to the acquisition of Euclid by General Motors, he had held discussions on this matter with the Antitrust Division of the Department of Justice. Outlined these discussions.

The inquiry by Justice was very complete, looking into "the transaction, its background, the intentions and all of that sort of thing."

2750 They "discussed at length the fact that Euclid was unable to compete because it was engaged in the manufacture and the sale of what was, in fact, a highly specialized and a specific tool, and not in a line of business; that it could not command the respect of the contracting fraternity in buying, it could not command the necessary support of distributors or dealers because they did not have the wide enough line; they did not have means of extending credit."

The firm was financially sound "but the means of going ahead simply were not there."

The Department people inquired about the competitive position Euclid held in the industry at the time.

2751 The Antitrust Division was told about the company's expansion, "the fight that the family had made to retain its position," about the small dividends that were being paid. Also, they discussed the effect the merger might have on competitors of GM, such as Cummins.

They discussed the place Euclid was to have in the General Motors Corp.; and the desirability of getting into standardized production so as to reduce costs to meet competition.

2752 There was only one conference with the Department of Justice people, but it was very thorough. He does not know of any decision made by Justice after this conference, as he was there at Mr. Hogan's (counsel for General Motors) invitation.

2753 He had only one meeting with representatives of GM prior to the acquisition; at this time they "discussed only the balance sheet figures," not the profits GM could anticipate from the merger.

As a member of the board of directors of the Euclid Co., he approved of the merger. He felt it was good for both sides.

FRIDAY, NOVEMBER 18, 1955

Opening statement by Mr. Burns, chief counsel

2755 The role of the independent parts manufacturer is a very important one in the automotive industry.

"Complaints have been made that coercion is exerted in various ways by General Motors upon its dealers, restricting their right to purchase parts and accessories from independent sources." The Federal Trade Commission has issued cease-and-desist orders to GM and its A-C Spark Plug Division, so the subcommittee is attempting to find if the orders have been effective.

"In January 1954 General Motors inaugurated a new program for the distribution of parts and accessories at wholesale. The subcommittee seeks to know what the effect of this program has been upon the automotive parts industry."

Statement of Donald P. MacDonald, attorney, Federal Trade Commission

2756 Statement of qualifications.

For 20 years he was assigned to the Chicago office; most of the passenger-car manufacturers are located in that territory.

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In 1934, and previously, GM dealers were complaining they were "not free to buy parts and accessories from local parts jobbers. Parts and accessories manufacturers and jobbers complained that they were unable to sell parts and accessories to General Motors dealers and they charged General Motors was monopolizing the parts and accessories business of their independent dealers." The FTC issued a complaint in 1937.

There were two issues in the complaint. GM was charged with "forcing its distributors to buy parts and accessories from their respective automobile divisions such as Chevrolet and Pontiac to the exclusion of competing sellers, through the use of intimidation, oppression, and coercion, including threats of cancellation and actual cancellation of new-car franchises, as well as shipping unordered parts and accessories, both directly and by attachment to new cars or in the trunks of new cars." It was charged that this violated section 5 of the Federal Trade Commission Act.

- 2757 The second issue was a clause in the new-car franchise of each GM dealer, which bound the dealer to use only GM parts in GM cars.

It was charged this violated section 3 of the Clayton Act involving exclusive dealing arrangements.

GM denied these charges, relying on the decision handed down in the Pick Manufacturing Co. case.

- 2758 The FTC "met the burden of demonstrating that competition had been substantially lessened by calling many manufacturers and their factory salesmen and jobber outlets * * * (whose) testimony demonstrated that by thus fencing its dealers off General Motors had reduced the sales of the independent parts and accessories manufacturers and had substantially diminished competition."

Not only were these manufacturers making quality parts, but some of them were actually selling them to GM. They testified there "was no substantial difference between the parts which they sold to their jobbers for resale to General Motors dealers and the same parts which they sold to General Motors Corp."

Many GM dealers and ex-dealers testified that they had been told by the GM division salesmen that they must buy parts from the GM division whose line or lines they carried.

In some cases, dealers had been ordered to get rid of "nongenuine" parts. "Additional quantities of parts and accessories were shipped without order when a dealer was found to be buying such items from local jobbers." They told how they had concealed parts and accessories from factory representatives.

"Other dealers and dealers parts men testified that they were directed to discontinue buying" parts which were made by GM but "sold through its United Motors division to local parts jobbers." This practice was forbidden because the dealers bought the parts through independent jobbers. In one case, the man was not working for Chevrolet, but "was working for an ostensibly independent dealer supposedly protecting that dealer's interest; but he was threatened with the loss of his job if he did not buy 100 percent Chevrolet."

- 2759 "United Motors jobbers testified that it was necessary for them to wrap General Motors parts in plain paper * * * so that the dealer who purchased them could put them in stock without being caught by the factory parts salesman for buying General Motors parts from United Motors jobbers."

Unordered merchandise was frequently shipped to dealers. "Sometimes protesting dealers were told 'they should know which side their bread was buttered on,' and 'with some cooperation from the dealer they could expect some cooperation from the factory.'"

Although the upper echelon at GM claimed it did not know about these practices, it is believed they did.

Not only were dealers forced to take merchandise they did not want, but "instances were cited wherein dealers were required to sign agreements to take quantities of accessories before they were permitted to renew their annual franchises."

- 2760 A cease-and-desist order was issued in this matter on November 12, 1941, approximately 7 years after the investigation was begun.

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The difficulty was occasioned by the difficulty in meeting "the principle ostensibly laid down in the Pick case." In the meantime, however, they were supported by a favorable decision handed down in the Carter Carburetor case. This case also involved automotive parts and tie-in sales and exclusive dealing.

2761 The cease-and-desist order directed General Motors to stop the practices the dealers had complained of.

The order was slightly modified in June 1942. "General Motors filed an appeal with the United States Circuit Court of Appeals for the Sixth Circuit, but subsequently withdrew the appeal. General Motors filed a report of compliance in which it indicated that it had eliminated the objectionable clause from its contract and had substituted a provision that the dealer would not sell or use in the repairing of General Motors vehicles, any part which he represented to be genuine unless it was in fact genuine. General Motors also reported that it had notified all of its employees of the provisions of the cease-and-desist order and directed them to conform thereto.

2762 "From time to time scattered complaints have been received from automobile parts jobbers and from associations of automobile parts jobbers that General Motors was violating this order. These charges have been investigated * * *

"The results of this investigation are now being reviewed by the Assistant General Counsel in Charge of Compliance who is preparing a report for the Commission."

GM has also been involved in other "formal FTC proceedings relating to automotive matters." A cease-and-desist order was entered in 1953 against the A-C Spark Plug Division, involving price discrimination and exclusive dealing.

In 1939 the FTC issued a cease-and-desist order against the General Motors Acceptance Corp. requiring it "to desist from false and misleading advertising of its so-called 6-percent finance plan." The Second Circuit Court of Appeals sustained the Commission's order in 1940.

Another order required GM "to cease and desist from representing as the price of any automobile in any advertisement any price other than the true retail price at the place of sale. There was no appeal from this order by General Motors." This practice of misleading advertising of the actual cost of the car was industrywide. All manufacturers voluntarily discontinued the practice, and the "other passenger-car manufacturers entered a formal stipulation with the Commission that they would not reengage therein. Ford and General Motors also discontinued the practice but declined to sign the stipulations whereupon the Commission held hearings and issued cease-and-desist orders against both Ford and General Motors."

Another cease-and-desist order was entered in 1948, "relating to the Guide Lamp Division of General Motors Corp. and which restricted the corporation's representations as to the effectiveness of its fog lights.

"In addition to the foregoing matters, the Commission has engaged in several investigations involving the practices of the various divisions or subsidiaries of General Motors Corp. wherein monopoly and also deceptive practices were the subject matter under inquiry. Several such matters are still under investigation. Since these informal investigations are not a matter of public record these have not been made the subject of comment in this statement."

2763 "In 1952 the Government Operations Subcommittee of the Committee on Expenditures in the Executive Departments of the House of Representatives requested the Commission to initiate an investigation of automotive industry products respecting parts prices being paid to parts manufacturers and vehicle assemblers by the Government." This inquiry pertained to the purchase of parts for military vehicles. The FTC made its report on July 6, 1954. There were no recommendations contained in the report.

2764 It showed that dubious practices "were being carried on by various truck manufacturers and their parts suppliers in an informal manner which did not appear to warrant proceedings for violation of the anti-trust laws."

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- In substance, they found that local parts dealers near a military establishment were unable to supply the parts needed at that particular base.
- 2766 Complaint, findings, and modified order, referred to above, inserted at this point.
- 2778 They encountered some problems in deciding which items were parts and which were accessories. It was a changing problem.
- Things such as bumpers started out as luxuries and were accessories, but as they became essentials they moved into the field of parts.
- In defining the term "full-line forcing," Mr. MacDonald offered, "It is a forcing of the full line of products which the corporation has to sell to the dealer, and a tying in of the lesser item with the major item, a practice which has been condemned repeatedly by the courts."
- 2779 A "genuine General Motors part" is "a part that is manufactured and sold by General Motors or by some manufacturer authorized by General Motors to make the part, subject to its approval."
- 2781 Even after GM sold its parts to an independent jobber and had presumably been paid for them, it placed "an order, a directive on the local dealer in a particular automobile, that he could not buy those same genuine parts from the local jobber."
- The "scattered complaints" he had referred to came in after the war. During the war, dealers were encouraged "to get parts from independent jobbers * * *. But as soon as the corporation developed a ready reserve of parts, then the jobbers were persona non grata, and the urging was that 'You now confine your parts purchases to your car factory channel'."
- 2784 Not only have dealers been required to take unordered automobiles, but they have then been faced with the problems of not being able to get them when they wanted them or of not being able to get the type they desired.
- 2785 In the case of the misleading advertising concerning the 6 percent financing plan, GM "contended that what they were trying to do was to make their advertising clear so that the public would understand what the rate of finance charge was.
- "But our inquiry demonstrated that many citizens were buying cars financed by General Motors finance plan with the thought that they were no longer paying what had come to be recognized as a rather exorbitant or if not exorbitant, at least high finance charge rate."
- 2786 Other automotive factories and finance companies followed GM "and the entire industry was using that type of plan when the investigation got underway." Actually, the interest came to around 12 percent. He spoke from firsthand knowledge, as he had also bought a car under this plan.
- The dealers helped pay the expense of this kind of advertising by making "a contribution to the advertising fund which is administered by an advertising agency." He does not know what the present practice is. There were complaints from dealers about this practice.
- 2787 The practice of misleading advertising about the prices of new cars was prevalent in 1935, and probably began long before that. The independent manufacturers were very concerned about this practice, and testified as Commission witnesses in the matter.
- "As a matter of fact, however, it was of concern to GM and to Ford and to Chrysler. It was a snowball that got rolling, and they did not know how to stop it * * *." After FTC stepped in, the practice was abated and, prior to FTC action, "all of them, including General Motors, voluntarily discontinued the practice, and had given some contemplation to asking us to adopt a set of fair trade rules for their industry to enable them to regulate the advertising."
- It was decided, however, this matter could be handled without adoption of a formal set of rules.
- Statement of James W. Cassidy, attorney, general counsel for the Motor & Equipment Wholesalers Association*
- 2788 Statement of identification.
- His statement will be offered as a joint statement of himself and B. W. Ruark, general manager of the Motor & Equipment Wholesalers Association.
- 2789 This association "is an international trade organization of independent automotive wholesalers that have approximately 3,500 wholesale trade outlets throughout the United States and Canada."

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There are some members, however, who handle GM parts. United Motor Service is the division of General Motors that distributes GM replacement parts.

2790 "The industry is called the automotive service industry because of the service operation in the distribution of automotive products and in the repair of automotive powered vehicles and equipment."

There are, in this industry, about 1,200 independent manufacturers, about 12,000 independent wholesalers, distributors, or jobbers, about 49,000 integrated car dealers, and nearly 300,000 retail outlets.

2791 New makes and models of cars, of course, require additional products. These automotive products are made by "independent parts manufacturers and the integrated automobile manufacturers who also manufacture and sell replacement parts."

Among the independents there are three classifications: Those that make both replacement parts and original equipment, those who make only replacement parts, and those who make only original equipment.

It is his understanding that United Motor Service is only a sales division, not a manufacturing unit. They deal in the identical parts that go into original equipment in GM cars.

2792 The approximate size of just the replacement market is about \$8.5 billion.

2793 Some independent manufacturers "distribute and sell identical automotive products through independent wholesalers and retailers in the replacement market. In the industry these are called 'competitive' parts. In addition the vehicle manufacturers also produce automotive products which are distributed and sold through integrated outlets in the replacement market. These are called 'captive' parts.

"For illustration, General Motors Corp. manufactures automotive products and also purchases automotive products from independent manufacturers. Some of both the manufactured and the purchased products are used as original equipment while some of both are sold in the replacement market.

"According to reports from members of our association, General Motors establishes high list prices with low discounts on their 'captive' parts, but establishes low list prices with high discounts on their 'competitive' parts. Our members say that because of this policy the independent wholesaler finds it difficult, if not often impossible, to compete with General Motors car dealers and wholesalers handling General Motors parts in the replacement market."

Generally speaking, users are dependent on a single source for captive parts. There might be patent, or other, restrictions that would keep the independents from manufacturing so-called captive parts.

2794 GM's practice of setting a higher price with lower discounts on their captive parts indicates they are making a higher profit on these parts.

2795 "On January 1, 1954, General Motors announced a new pricing and distribution plan under which all 19,000 of its car dealers became wholesalers with no restrictions (which previously existed) on their receiving and wholesaling AC or United Motor Service products."

This places GM's car dealers in competition with members of Mr. Cassidy's organization as well as with the United Motor Service wholesalers. "In addition, General Motors 'captive' parts were made available for the first time to the automotive jobbers handling AC and UMS lines. Under the new plan, General Motors established what can best be described as a one-price policy to distinguish it from the previous pricing policy that included incentive and functional discounts. Letters to car dealers from the car manufacturing divisions of General Motors urged the car dealers to enlarge their wholesale parts business * * *" Quoted from a letter to the dealers telling them how they could "obtain the substantial gross profits from this business."

"In announcing this new plan, spokesmen for General Motors indicated its purpose and objective, as follows:

"* * * the primary reason for the new policy is that General Motors, having manufactured approximately 50 percent of all cars, trucks, and engines, feel they should make effective a plan to penetrate the replacement parts market they are rightfully entitled to."

Discussed the new one-price policy.

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2797

By their action, GM has "effectively removed all of its 19,000 car dealers as potential customers of the independent wholesalers of automotive products in the replacement market, and by that statement I mean their own UMS wholesalers—by putting its car dealers into the wholesale replacement parts business under conditions whereby the car dealers cannot afford to buy replacement parts from anyone but the General Motors car divisions." They will not buy from the independents "because of the possibility of reselling such parts at wholesale and losing the override compensation that they would get if they bought the parts through the car divisions." They would not get the same discount through UMS as through the GM divisions.

2798

Another practice of GM is that it "represents in advertising that the replacement parts purchased by General Motors from independent manufacturers and sold through their car dealers and other wholesale outlets are 'genuine parts,' and implies in such advertising that any replacement parts which do not carry the General Motors 'genuine parts' label are inferior, spurious, or 'gyp' parts. It is well known in the industry that the independent parts manufacturers distribute replacement parts through independent automotive wholesalers which are identical with the replacement parts distributed by General Motors under the 'genuine parts' label."

Many members of his association "believe such representations constitute false advertising of such parts and false disparagement of identical parts sold by independent wholesalers."

2799

In all fairness, he said GM buys and sells "certain types of replacement parts that do not have the counterpart on the independent side of the market." But in many instances the parts made by independents are available and identical.

This matter has been reported to the Federal Trade Commission.

In order to protect the public from gyp parts, there may be ways in which the term "genuine parts" could be used that would be entirely proper; "but if it is used in a manner whereby it disparages the parts which are identical and sold by the independent wholesaler," then that is improper.

2800

This type of advertising is aimed not only at the user but also at the car dealer. This should be considered in determining if GM is violating a cease and desist order entered in 1941 or if they are possibly violating section 3 of the Clayton Act.

Another practice he called to the attention of the subcommittee is that some independent manufacturers "sell automotive products for original equipment to General Motors at lower prices than the prices charged for automotive products sold for replacement purposes." This is not a "complaint" but background.

"The Federal Trade Commission in its cases against the spark plug companies had held that such price discriminations are not unlawful because parts sold for replacement purposes do not compete with parts sold for original equipment, and because they do not compete, the Commission says there is no injury to competition flowing from the difference in the prices between replacement parts and original equipment.

"It is believed by some of our members that General Motors is thus obtaining automotive replacement parts under the guise of original equipment at lower prices than the prices charged the independent wholesalers for identical replacement parts, and that General Motors is thereafter distributing and selling such automotive products through its car divisions (and its wholesale outlets) in the replacement market."

He is not positive about this matter, but the belief "is supported by the reported fact that General Motors car dealers are now selling numerous replacement parts at lower prices than such parts can be purchased by independent wholesalers from the same independent parts manufacturer that sells to General Motors."

He is not sure whether GM negotiates for replacement and original equipment parts at the same time or not.

2801

It is possible that the situation of dealers selling parts cheaper than the independents can has been brought about by the reported practice of GM forcing unwanted parts on dealers who, in turn, dispose of them as best they can.

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2802 Since manufacturers rely to a great extent upon sales of replacement parts for their profit, the burden is placed on the users who have older cars and have to purchase replacement parts several times.

Remarked on FTC proceedings against GM dealing with coercion and intimidation of its dealers, requiring them to handle GM products exclusively.

2804 "Reports from members of our association indicate that notwithstanding this decision of the Federal Trade Commission, General Motors has continued the same or similar acts and practices, condemned by the Commission, which actually or impliedly intimidate and coerce the car dealers to deal exclusively in automotive replacement parts purchased from General Motors. Moreover, at the present time there seems to be widespread belief established in the public mind, no doubt by General Motors, that exclusive dealing by its car dealers is the orthodox rule and that any deviation therefrom is rank heresy. But be that as it may, General Motors has now effectively foreclosed its competitors, particularly independent automotive parts manufacturers and independent automotive parts wholesalers, from their car dealers who constitute a substantial share of the consuming market in replacement parts."

2805 The association has no objections to bigness as such; indeed, "we need the incentive to grow big as part of our free competitive enterprise system."

But if a business grows so big it substitutes coercion for incentive, then it violates antitrust laws and consideration should be given to "either breaking up such an organization into smaller parts" or stopping it in some way.

2806 "There is no special virtue in being small, just as there is no particular merit in being big, but there is a virtue and great merit in being free and independent."

"The existence of a host of independent businesses—large, medium, and small—is the foundation of a democratic, competitive economy. Wholesale distribution makes that possible. It is therefore a principal bulwark against monopoly and a tremendously important factor in maintaining our free competitive enterprise system."

2807 The Sherman Act "prohibits conspiracy to fix prices. If two small-business men agree together on the prices of a product sold in competition by them they violate the antitrust law, but a huge integrated organization, acting as a single legal person, can establish price policies that have a decided effect upon tens of thousands of other persons and no question of conspiracy arises. The result illustrates the 'unbalance' in our economy which must be corrected by enactment and enforcement of our antitrust laws. If this cannot be done then we court the adoption of a system of 'collective bargaining' for the small-business men engaged in wholesale distribution."

They made the following recommendations:

"(1) That the antitrust laws designed to protect and preserve small independent businessmen be strengthened so as to allow freedom of choice in decision and action and to secure equality of opportunity of all persons to compete in trade or business;

"(2) That coercion, intimidation, and exclusive dealing in any line of commerce be prohibited by enactment of both civil and criminal statutes;

"(3) That legislation be enacted requiring automotive parts manufacturers to brand all parts sold as original equipment so that they may be distinguished from similar parts sold as replacement parts at higher prices, and requiring that records of sales of parts for each purpose be kept for a period of 6 years; and

"(4) That section 3 of the Clayton Act as it relates to the legality of both tying and exclusive arrangements be restudied and rewritten in the light of recent Court interpretations so as to protect and preserve the independence of the small-business man."

2808 He does not know of any coercion or intimidation used by GM to prevent its jobbers from handling competitive lines, but he has heard "of certain exclusionary promotional activities that would tend to exclusive dealing with those jobbers." Described some of these dealings.

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Statement of Harold T. Halfpenny, counsel, National Standard Parts Association; accompanied by Jack L. Wiggins, executive vice president, National Standard Parts Association

2811 Statement of identification.

The association has a membership of approximately 350 manufacturers and 2,500 wholesalers of automotive parts, supplies, and equipment, located in the 48 States.

2812 Mr. Halfpenny had appeared before the subcommittee previously, at which time he "detailed the growth and distribution problems of the automotive replacement industry, pointing out that the three major vehicle manufacturers not only assembled vehicles but actively engaged in the production and distribution of automotive replacement parts and services.

"That the three major vehicle manufacturers in attempting not only to sell original equipment but to control all repairs and services to their respective vehicles are trying to create a monopoly. Today's testimony supplements such previous testimony to particularize and direct your attention to General Motors' growing concentration of power."

There are members of his association who furnish identical parts to General Motors as well as their independent wholesalers. None of them would supply GM exclusively.

2814 Many of the members have been in the business for 40 or 50 years; "Many of them started back in the carriage business, and developed parts that have been used in the assembly of automobiles by the vehicle manufacturers."

When he refers to integrated car dealers, he means they "not only sell cars of the various major vehicle manufacturers but they also supply parts that they sell, the repair parts, and they also supply service of various kinds in repairing those cars."

These 49,000 integrated dealers did not become serious competition to parts manufacturers until after World War II.

2815 The two distribution divisions of GM, AC Spark Plug, and United Motors Service, are also members of the organization.

On January 1, 1954, a GM plan became effective allowing its dealers to become unrestricted wholesalers of AC and UMS products.

He quoted from a statement of a GM official made at the time of the institution of the plan reading, in part: " * * * the primary reason for the new policy is that General Motors, having manufactured approximately 50 percent of all cars, trucks, and engines, feel they should make effective a plan to penetrate the replacement-parts market they are rightfully entitled to."

Prior to this, GM dealers had not received products directly from AC and UMS nor had they been wholesale sellers of these products. They were obtaining parts from the car divisions.

2816 Under this new plan, they are selling to independent repairmen with whom they compete and who, "heretofore had always been the customer of our independent wholesaler."

Referring to the statement of the GM official, Mr. Halfpenny was asked how he construed the phrase "the replacement-parts market they are rightfully entitled to." He replied:

"I do not think they are rightfully entitled to any market. But they * * * believe * * * that they are making 50 percent of the automobiles and that, therefore, they should have 50 percent of all the repairs, which means that the repairs of all General Motors cars should be sold through them."

2817 He pointed out that vehicle manufacturers are only assemblers of parts * * * that these are not their inventions.

GM is not entitled to 50 percent of this market. Most of the parts were inventions of independent manufacturers. Other car manufacturers would not compete with GM in the parts field because they are interested in their own parts. They compete only on the consumer level. So the only real competition to GM is from the independent manufacturers.

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The opinion has been expressed by other GM officials at other times that they were entitled to 50 percent of the replacement market.

2818 Senator O'Mahoney thinks it important to get in the record "as clear a picture as we can of the regional system set up by General Motors and the other companies and associations that may be involved, and the zone, so that we may compare these regions and zones with the boundaries of the States."

2819 He felt most of the car dealers were not too enthusiastic about going into the wholesale-parts business, but were pressured into it. They were more interested in selling automobiles.

2820 The car dealers have gone into the parts business, however, because if you have a franchise "you generally do what the major vehicle manufacturer suggests that you should do, and especially in recent years when a dealership has been a very economic aid to anyone in that business."

- The manufacturer would not resort to threats of cancellation of franchises, but would say, "You have been very successful as a General Motors dealer. The corporation knows what is best for you and what we have decided is the thing that will make you money and that you should go into it."

2821 Some of the NSPA members say they have lost business because the dealers no longer purchase from them since the GM parts plan went into effect. They hear about this through a credit-reporting form sent out by GMAC to all independent wholesalers.

2822 Some of their members have told them that GM zone managers go to a dealer and ask him why he is buying parts from an independent wholesaler when they have a GM division selling these parts. The NSPA members hesitate to put this sort of thing in writing, however, as they fear they will lose more business.

Not all GM dealers got into the parts business. As a matter of fact, they adopted a new plan in mid-1954.

2823 It is his belief that from the credit reports GM or GMAC could determine something about the volume of purchases which the car dealer makes from independent sources.

Mr. Wiggins cannot understand why GM would not have the necessary credit information on its dealers without having to resort to the use of credit reports from independent wholesalers. Most of the independents now refuse to answer these reports.

In mid-1954, GM announced a new, drastic, policy change in its drive for a greater share of the replacement market.

"The sale of fast-moving parts manufactured by General Motors Corp.—these are things they manufacture themselves which we commonly call captive parts—including transmission, steering, brakes, bumpers, grills, body hardware, and batteries, previously sold exclusively through General Motors car dealers and truck dealers, was promoted through certain selected independent wholesalers. These selected wholesalers are sold what is called a GM package deal, varying in size from \$10,000 to one-half million or more, with the right to return all unsold merchandise up to 12 months from date of purchase."

2824 It is their understanding GM will select about 1,200 dealers to handle this plan. "About 600 to 800 wholesalers have already taken on the plan. In choosing these dealers, GM looks for the largest or most prominently known in the area."

This deal includes not only GM-made parts but parts made by an independent manufacturer—from whom the wholesaler may be purchasing anyway—but packaged in GM boxes.

2825 Mr. Halfpenny calls this a drastic change because if a dealer accepts this package, his salesmen will be showing GM parts and the "independent parts manufacturer's product for the same vehicle; and he now, though, can sell the * * * General Motors car dealers, a General Motors part which he could not do before.

"Looking ahead, it seems to me that they have put their foot in the door as far as the independent market is concerned, that they can get strong enough so that they can almost dictate the terms; eventually that is going to occur as far as the independent wholesaler is concerned."

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- 2826 Some of the manufacturer members of NSPA say they have lost "a certain percentage of the volume of General Motors repairs that they previously were getting." The outlets they still have are "the smaller and more expensive to serve." However, the plan has not been in operation long enough to know exactly what its results will be.
- 2827 In view of the statement made by a GM official, Senator O'Mahoney said it is "very important for this committee to know whether or not this new system has, in fact, circumvented the (FTC) cease and desist orders."
- Mr. Halfpenny said that although these orders have been upheld by the courts, they "have been ineffective as far as preventing the continued growth and taking over of this replacement market is concerned."
- 2828 On items where GM has strong competition they will give as much as 50 percent discount. On captive parts, they will give a discount of only 15, 20, or 25 percent and sometimes up the price. This puts the independent manufacturer at a serious disadvantage. General Motors sets the price structure to the independents on replacement parts "because of their tremendous advertising."
- 2829 Historically, independent parts manufacturers have had to follow GM's list prices. "It is quite noticeable that on the replacement, automotive parts that are highly competitive, where there are strong independent manufacturers active in the business, there has been no appreciable change in General Motors' pricing—even in the face of increased costs of labor and material. However, GM has greatly increased its prices on captive items, "resulting in substantial profits." Questions if GM are using these profits to stifle independent competition.
- 2830 This \$2.5 billion industry is in danger of being pushed out of existence, therefore, they appeal to the Congress. They feel that is the only place they can get relief, as they cannot get it through the States or under existing antitrust laws.
- 2831 "There is not any question but the vehicle manufacturers have done an outstanding job in putting cars on the road. But now are they entitled after you buy a car, that you are a captive of that corporation the balance of your life? Because a car is a necessity, most people buy it on time, and if they are going to have to buy all the repair parts and service through that corporation you are going to be mortgaged to them for the balance of your existence * * *"
- It is Mr. Halfpenny's contention that, "All the real developments in the industry have come from these independents working in back-room shops, and these alley garagemen * * *"
- The "full impact of what General Motors is doing in this replacement field has not been felt as yet."
- 2832 In discussing the automotive field, Senator O'Mahoney said, "If it should come about that only 1 or 2 great motor companies should survive and should have the complete control of the manufacture of parts, the distribution of parts, the repair of automobiles, then we would have a concentration in this industry such as has never before existed." Mr. Halfpenny agreed.
- The independent wholesalers and manufacturers have accepted the obligation of making and carrying slow-moving parts for repair of vehicles that are no longer manufactured. The vehicle manufacturers do not assume such an obligation.
- 2833 It is estimated that 1 out of 7 people make their living out of the automobile industry, in one way or another.
- "We do not believe that big business is the natural enemy of small business or that one prospers only at the expense of the other. However, in the case of the major vehicle manufacturers, and especially General Motors, it would seem that now is the time when this Nation must decide whether the major vehicle manufacturers are to have complete monopolies in the manufacture, sale, financing, and repairing of their motor vehicles and trucks, or whether it is time to invoke divestiture proceedings * * * there have been divorcement and divestiture proceedings instituted in industries that did not affect the public nearly as much insofar as this automobile industry is concerned."
- 2834 The farm machinery industry does not compare with the automotive industry.

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- 2835 He has no objection to their purchasing original equipment cheaper than replacement parts, because he thinks "that is necessary to put the car on the street. But when they go into the replacement market they should have to pay the same as the independent wholesalers for those replacement parts, except whatever difference they could cost-justify." It is their opinion that GM diverts parts bought for original equipment, at a lower price, into "the replacement market in competition with the independent wholesalers that purchase at a higher price."
- 2836 There is no way the independents can prove this, however. If the manufacturers compared notes in an effort to back up this supposition "they would be in violation of the antitrust law." Most independents are so anxious to get the business they do not ask GM how many parts are actually to be used as original equipment. The price differential problem has not been as grievous as the genuine-parts sales approach made by GM.
- 2837 To keep up the standards of their products, the manufacturers represented by NSPA maintain engineers and laboratories and are constantly attempting to "further develop and perfect whatever part they are making. It is a precision business, and almost all of the great improvements on the General Motors cars in recent years do not come from General Motors but from the independent manufacturers' engineers."
- 2838 Independent wholesalers and manufacturers have been losing percentage of the market "very rapidly."
- 2840 Senator Dirksen pointed out that the GM package deal, with its returnable parts provision, was almost a consignment proposition rather than a purchase plan. Mr. Halfpenny said dealers could get financing from the local banks for the GM package deal that he could not get if it were being offered by an independent.
- Statement of Albert S. Holzwasser, president, Arrow Armatures Co.; accompanied by Harold T. Halfpenny, counsel, National Standard Parts Association*
- 2841 Statement of identification. His company rebuilds generators and starters and rewinds armatures. They also make some new components. Some years ago there were about 12 manufacturers of starting, lighting, and ignition equipment. There are now three: "Ford Motor Co., who produce generators and starters for their own vehicles; Electric Autolite Co., who supply generators and starters to Chrysler as well as competing with General Motors in supplying the other independents such as Nash, Packard, and Willys. The third producer is General Motors, who through their subsidiary, Delco-Remy, supply equipment on all General Motors cars and trucks as well as competing with Autolite in supplying the independents. Since Ford appears to have no surplus production to sell in the general market, the field actually narrows now to but two suppliers. And in addition to supplying equipment for conventional vehicles, both Delco-Remy and Autolite supply equipment for military vehicles to all branches of the military."
- 2842 He thinks Delco has 62 or 64 percent of the market. "The range of General Motors products runs from diesel-powered railroad trains all the way down to the subject of this discussion: generators, starters, and armatures; and for several years General Motors has been rebuilding second-hand generators offering these to the trade as 'genuine' Delco-Remy rebuilt generators." GM's United Motor Service division, as a rebuilder of generators, "is now in competition with several hundred small businesses who do and have done generator rebuilding for 20 or more years. "Many of these small rebuilders have applied good business principles and aggressive selling tactics and techniques to their operations and have become reasonably successful and sound. After battling for years against price cutting and chiseling tactics on the part of back-alley sharps, these small, more successful rebuilders are now confronted with a more difficult competitor. General Motors in the form of their subsidiary, United Motor Service, presents an almost insurmountable problem."

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2843

His price for a rebuilt generator is \$6.95, as compared to \$8.85 for a rebuilt Delco generator.

There are approximately four times as many rebuilt generators sold in the replacement field as there are new ones. The difference in choice is mainly in price.

Delco's rebuilding generators is a recent operation. Previously, they had only made new products—they had not even done any servicing.

2844

"A customer of ours in Massachusetts who also handles Delco-Remy was told by a United Motor Service salesman, 'You have two lines of armatures on your shelf * * * what will it be, Arrow or Delco-Remy?'"

Arrow sells to automotive parts wholesalers and electrical parts wholesalers specialists. Some of them handle GM lines as well as independent lines of parts. However, the principal market of his wholesalers would be the independent repair shops, filling stations, etc.

"In another case, a Connecticut wholesaler after carrying Arrow generators for about 2 years, wrote a letter in which he stated that before he handled Arrow, generators 'were an orphan line' with him, and that he didn't sell many. We worked our merchandising program with him, increased his business many times since that letter was written, and then he bought the GM parts package deal. Since he went GM, his purchases of us have been cut more than half.

2845

"And here's a report typical of many we get from our salesmen; this one is about a wholesaler in New York State. Our salesman says, 'He is now a GM parts jobber, definitely not interested.'"

Both of these recent statements since the GM package deal was offered.

A dealer in GM parts does not give Arrow products as good a display as GM products. And not only are their rebuilt generators as good or better than Delco rebuilds, they are priced lower. However, "While the subsidiary, United Motor Service, includes and lists new generators in their price sheets, the stocks on the wholesalers' shelves are all rebuilt generators. From this, one can only assume United Motor Service is interested in selling rebuilt generators only."

2846

"Another problem hit us about a year ago. For several years the Army and Air Force Exchange Service, New York City, had been purchasing from us Arrow rebuilt generators, starters, and armatures. We had received and were working on several of their orders; in fact, some were packed in export cases ready for shipment when cancellations were received. Inquiry as to why the orders were canceled developed this stereotyped answer, 'We got orders from the other side, they want new generators.'

"We were even denied payment for expenses incurred by us in production and in packing these orders in export cases. We are still working on this case, and hope some time to find out why our merchandise is being discriminated against in favor of merchandise produced by so-called big business."

The total amount of money lost by these cancellations was not much, but it was to a small company like his. He does not know who ultimately got the business.

2847

In another case, a refueling vehicle at the Bedford, Mass., airbase broke down and Arrow was asked to supply another armature. They couldn't find the part number or specifications in the books. A new armature had been ordered but Delco said it could not be delivered until January, which would have been 2½ or 3 months. When this armature was brought in, along with another one from the same base, they found that "while the part number on the armature owned by the Government meant nothing to us, the armatures were identical to armatures produced by Delco-Remy for conventional vehicles under a different, but familiar, part number."

He thought it interesting that the "distributor's charge to the Government for supplying these armatures and rebuilding the complete starter motor, including all parts and labor, was about \$33 each. A new part, as ordered, would have cost the Government in the vicinity of \$70."

2848

No parts numbers or specifications were published by Delco on military vehicles, whether they are strategic or nonstrategic. Thus, this material must come from the original parts manufacturer. The refueling vehicle mentioned was nonstrategic.

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2849 Autolite, however, does not follow this practice. They use their "conventional parts numbers whether the part or the complete unit assembly is for a civilian or a Government-owned vehicle."

He outlined the difficulties they had in attempting to get business during and after the war. Not only did they not get the business, but the conditions which prevented it still exist today. "Small business is excluded from selling to the military, most particularly in the case of parts for General Motors products, electrical parts," with which he is familiar.

"Discrimination, if I may call it that, persists. It precludes the small, independent businessman from getting a share of business which is rightfully his. And the damnable part of it is, so far as the military business is concerned, it is costing the Government many thousands of dollars, too."

2851 The Defense Department has never given them any business, as they buy only new products, even though the rebuilt item will serve as well or better.

Letter inserted by Mr. Halfpenny regarding low pricing on original equipment.

Statement of Henry Trauscht, Evanston Auto Supply Co., accompanied by Harold T. Halfpenny, counsel, National Standard Parts Association

2852 Statement of identification.

He is a wholesaler of automotive parts and supplies.

Previously he has testified before congressional committees on this subject as well as conferring with FTC and an Assistant Attorney General.

2853 He questioned if anything would be done because of the experience of himself and others with a Small Business Subcommittee in the 80th Congress. He said, "That was 7 years ago. And the situation remains unchanged to this date."

"At this very moment the law prohibiting coercion in business is violated with the same impunity by General Motors, Ford, Chrysler, the major oil companies, and the major rubber companies, as it was in 1948, and, verily, ever since the Clayton Act was enacted."

He knows of no instance in which "General Motors has been cited for violating the cease and desist order issued against them in 1941," that they were not to use coercive tactics in selling their products.

2854 If a small-business man depends on a major car manufacturer or oil company as his major source of supply and does not conform to its way of doing business, he soon loses his franchise or lease.

It is well known this type of coercion exists because owners and employees of automobile agencies and service station operators discuss this condition "quite freely with wholesalers and their salesmen. They do not hesitate to admit to us that the retention of their franchise lease is contingent upon their buying the greater percentage by far of their requirements from the factory or the major oil company, whichever the case may be." He cited experiences dealing with antifreeze and undercoating.

2855 Frequently manufacturers ship merchandise to the dealers without specific orders.

2856 The "little fellows" have been able to survive so far only because of an expanding market.

Some of the dealers who receive unordered supplies are GM dealers.

The car manufacturers do not make either the antifreeze or the undercoating but "buy them, in most cases, from the same producer as the wholesaler."

"In the case of permanent type antifreeze, our prices are almost identical to those of the car manufacturers. However, in the case of undercoating the price situation is different. So wholesalers do have a selling price advantage over the car factories. Nevertheless, the car agencies are forced to buy from their respective car dealers."

2857 Mr. Trauscht said "there is a school of thought among many small-business men which maintains that coercive selling and enforced business procedures are all right as long as the subjects of this system are the recipients of nice profits. This thinking could be the outgrowth of an expression by an ex-General Motors Government official, which in

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- substance meant that anything which was good for them was likewise good for the country.
- "I submit that this thinking is grossly in error, because the principles of liberty and free enterprise are much deeper than dollar profits. If dictatorship is good in this business, why not in politics, why not in religion? What is good for big business is not necessarily good for the American people."
- They have been told by the FTC and Antitrust Division of Justice Department that these offices did not have enough money to gather evidence and enforce the antitrust laws, and suggested the industry gather the evidence for them.
- 2858 Mr. Halfpenny told the subcommittee their complaints have resulted in the FTC's taking action only against the small independent manufacturers of the industry instead of the major vehicle manufacturers.
- These small independents have been charged with violating the Robinson-Patman Act. Cases are pending now against Whitaker, Moog Industries, Niehof P. & D. Manufacturing, Standard Manufacturing, to name a few.
- 2859 Mr. Trauscht believes a further increase in fines for criminal antitrust violations and a prohibition of corporations' paying penalties for their officials would be helpful. "From my very limited layman's viewpoint it has always occurred to me that our laws were adequate. However, there was a lack of coordinated enforcement, primarily because of a lack of sufficient funds to get the job done. A small-business man is not seeking the favor of preferential treatment from his Government. He only asks for justice under the law."
- 2860 One dealer received a consignment of radios from GM that he had not ordered. This type of thing occurs with other products as well.
- Statement of G. C. Morris, executive director, Automotive Wholesalers of Texas*
- 2861 Statement of identification.
- While he will direct his remarks to "certain aspects of General Motors policy and practice," the members of his organization are concerned about practices of other manufacturers as well.
- 2862 "Our problem, stated pointedly, is this: The independent automobile parts wholesaler—or jobber—is, in this greatest era of prosperity of the automotive age being systematically, deliberately, and effectively driven out of business. The net profit has shrunk in the last 12 years from 15 percent to 2.5 percent, before taxes." Gasoline refiners and marketers are responsible as well as the automobile manufacturers.
- They are asking for no special privileges—only for the rights to take the risks or enjoy the profits of fair competition.
- Distribution is as important to the American economy as is production. Competitiveness is disappearing today. "By their control over the outlets for parts, accessories, tires, and batteries, these major business concerns are able to exert indescribable pressures to force the holders of their franchises to provide the public with those parts or other items in which the majors have a financial interest."
- 2863
- 2864 GM dealers frequently complain about threats to remove their franchises if they procure parts and supplies from other sources than GM.
- In his opinion "this business of representing certain parts as 'genuine' parts is one of the most fraudulent advertising campaigns ever foisted upon the public." As an example, he showed an ad for "genuine" Chevrolet pistons. Chevrolet is not making pistons. Many times "it is made by the same manufacturer who makes pistons that are sold to the independent automotive wholesaler." The only difference may be in packaging.
- 2865 "The same specification, design, and engineering is used in the manufacturing of automotive wholesale parts for both wholesaler and car manufacturer.
- "For reasons known only to them, however, the Federal Trade Commission has occupied itself with many pursuits but never with the major manufacturers' deliberate misrepresentation of their parts as the only genuine parts.
- "The profit to be made from selling this idea to the public, is, obviously, enormous. It should be pointed out, however, that the public stands to suffer. If the car owner is ultimately denied any right of selection in

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choosing parts, batteries, and so forth, then he has no competitive protection regarding quality."

It is his view, and the view of most wholesalers of his acquaintance, "that this committee could render few services of greater value than to cause the FTC to look honestly at the misrepresentation of the so-called genuine-parts advertising. Whether GM or Ford or Chrysler is involved, the abuse of the public faith and the public pocketbook obviously merits attention it has not received. In my own case," Mr. Morris said, "the only response I have been able to muster from the FTC has been a brushoff."

2866 Read into the record a letter from one of the members of his organization complaining about General Motors practices. "Hundreds of instances are known where the car dealer buys merchandise from his automotive jobber and literally hides it away from the car manufacturers representative, who will put on the pressure if he finds the dealer doing business with the jobbers.

2867 Read portions of another letter from a member attacking GM's pricing policies to its dealers and to independents.

2868 Prior to January 1, 1954, General Motors car dealers could buy replacement parts from the company or from independent automotive wholesalers, though some pressure was exerted even then. "Today, that vast array of establishments is, for practical purposes, no longer a market but is, instead, virtually a major competitor." January 1, 1954, was the date the GM package deal plan went into effect.

"If General Motors is out to secure more than 50 percent of this business, they have—in our part of the world—made tremendous headway. We have no quarrel with the size of the organization. We are not against them because they are big. We are against them because they are unfair, because they are using an economic gun in the stomach to force their dealers to do business with them, and in this way, they are eliminating our right to compete."

2869 The independent wholesalers have not only lost business from dealers, but have lost business from the independent repairmen who now buy from the GM dealers.

"We say that the honesty of their advertising needs examination—more than it has received. We say, likewise, that their resort to coercive pressures needs examination and action. It requires no great talent to foresee the making of a monopoly." At present, laws and staffs available for their enforcement are inadequate.

"I believe a thorough study by this committee would establish that while the manufacturers—along with the gasoline retailers—have sought to capture and control the replacement-part market by eliminating the wholesaler no effort has been made to reduce the ultimate consumer cost. The manufacturers are anxious to gain—not reduce—the wholesaler's markup. They want to eliminate the wholesaler, but not his margin. In other words, the ruling philosophy seems to be that what's good for the independent businessman can be made even better for General Motors—at the public's expense, of course."

2870 Mr. Halfpenny said that although the FTC had been told repeatedly about the genuine-parts advertising, he knew of no action that has been taken.

2871 It is believed that procurement of parts marked "genuine" will ultimately hurt the independent manufacturer, also, because the car manufacturer will make more and more of his brand products.

Statement of Edward J. Perreault, president, Perreault Auto Parts Corp.

Statement of identification.

2872 "What is GM's fair share and how will they attain their goal? These are two vitally important and as yet unanswered questions. Quite frankly, as a small-business man, I find myself wondering what my future is in the automotive service industry. Before General Motors arrives at its goal, I feel quite certain that many smaller wholesalers will go 'by the boards'."

As a small wholesaler, he questions his "protection from retaliation by either authorized car dealers to whom I presently sell, or possibly even General Motors itself."

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He believes it can be shown the Big Three set not only prices but discounts for automotive parts. But even more dangerous, GM not only fixes "the selling and buying price—they have virtually forced independent manufacturers to produce a competitive product for less money than they actually receive themselves. Quality of merchandise, believe me, is identical."

- Discussed some of GM's pricing and discount practices.
- 2874 Said it was not the independent distributors or garagemen who will suffer but the car owners.
- GM has discontinued the historic 2 percent cash discount practice. "In 1954, the average net profit after taxes for automotive distributors ranged from 2.06 to 3.61 percent. With 2 percent cash discount removed from quoted net profit figures, the bottom of the barrel can now be seen from all angles."
- Mr. Perreault handles no GM lines at all, so this doesn't hurt him immediately, but if this becomes a practice throughout the industry, it will.
- 2875 He does not know if GM intended it to be so or not, but "it is historic in our business when something is kept in percentages and then transferred to net prices, the wholesaler definitely suffers; he has always suffered, and he will always suffer."
- 2876 A smaller wholesaler has a higher gross profit than the larger firm. "With full knowledge of gross profit necessary to keep the independent distributor in a liquid state, or sufficiently profitable, to perform all the services required of our complex industry, does it not seem logical that if General Motors pegs resale and cost slightly below national gross profit averages, that eventually they can dry up the working capital of the independent wholesaler?"
- 2877 Prior to the introduction of GM's parts program, he was grossing 35 percent on Chevrolet mufflers; he has now been reduced to 27 percent.
- 2878 He believes GM may be gradually raising retail prices on some items.
- 2880 The economic necessity of high turnover of stock in his industry keeps inventory costs very high, and the number of new models coming out each year just increases the burden. His company had to add 82 stock numbers on exhaust-system parts for 1955, but found only 31 numbers that could be discontinued because of old age. "Year after year, repetition of this same pattern will actually force the average automotive wholesaler out of business."

TUESDAY, NOVEMBER 22, 1955

Statement of E. L. Schofield, president of E. L. Schofield, Inc., accompanied by C. F. Story, vice president, and W. W. Brown, sales representative

- 2883 Statement of identification.
- The company manufactures and sells automotive hot-water heaters. One of their important lines is custom heaters for Chevrolets.
- 2884 "Late in 1954 we announced a new model heater designed for the 1955 Chevrolet car and almost immediately began to receive orders for substantial quantities from established Chevrolet dealer accounts. Shortly after the first of the year, however, sales diminished drastically. "Upon investigation it was found that General Motors zone and district managers in certain major metropolitan areas were refusing to approve orders for 1955 Chevrolet cars without factory-installed heaters. "The situation soon became so bad that we found it necessary to lay off employees and to divert our efforts to other products and for other markets in order to keep our business alive. In the meantime our sales organization has dissipated simply because salesmen could not make a living due to General Motors' practices."
- 2885 They sell through manufacturers' agents—not independent wholesalers or jobbers.
- They did so well with the Chevrolet heater in 1954, the first year they marketed it, that they expanded the selling program throughout 1954. This also encouraged them to develop the heater for the 1955 model.

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- 2886 Prior to 1955, it is believed Chevrolet never installed heaters in dealer-delivered cars. Their dealers got them from the GM division. It is the Harrison Division of General Motors that makes the heaters.
- In anticipation of a dealer's sales, GM had usually furnished him with a 90-days' supply of heaters.
- 2887 His heaters were quite a bit cheaper than the Harrison heater, giving a customer a savings of about \$16, meanwhile maintaining high quality.
- 2888 In October 1954 when GM announced the 1955 Chevrolet, they said "that through January all cars would have factory-installed heaters; after January the cars would be available without heaters." However, this did not come to pass. In a large portion of the United States, Chevrolet continued installation of the heaters, although it was possible to get cars without heaters in some areas.
- 2890 He had talked to a switch manufacturer in Boston, Aetna Products, from whom he had bought switches since 1948, and was told they could no longer supply him; that Aetna had been told by the GM purchasing department that if they sold switches to any other heater manufacturer GM would stop doing business with them.
- It is assumed that GM owned dies or tools that the Aetna Co. used in making their switches. Schofield bought a stock switch, but in the past had followed this practice and had, in fact, offered to pay for tools and dies used in manufacture of their switches.
- 2891 He is surprised at General Motors adopting this policy on such an insignificant item. It might be "a forerunner of what they would do if they could control everything."
- 2893 The FTC has issued a cease-and-desist order requiring GM to stop requiring their dealers to take cars with GM accessories, such as heaters.
- 2894 By March 1955 their business was so bad they consulted legal counsel who advised "that the practice of forcing the sale of heaters (listed by General Motors as optional equipment) as we alleged, if true, would constitute a violation on the part of General Motors, of section 3 of the Clayton Act, 15 United States Code 14."
- 2895 Cited the provisions of the FTC cease-and-desist order issued in 1942. Attorneys for Schofield "prepared an abstract of reports furnished us by our salesmen in which names and locations were omitted because they had been given us in confidence. This abstract was submitted to L. H. Bridenstine," a GM counsel, at a personal conference March 24, 1955.
- Submitted pertinent sections of this report, explaining why Chevrolet dealers no longer wanted Schofield heaters, to the committee.
- 2899 He had not seen any General Motors zone managers himself. He prepared this report from reports of his salesmen.
- 2900 Not only were car dealers canceling orders with Schofield but were returning heaters they had ordered previously.
- "Upon receiving this report from us on the heaters, Mr. Bridenstine, speaking for General Motors, stated that it is not General Motors' policy to hold up or not accept orders for cars without heaters, and that if we would submit definite evidence of such practices it would be examined immediately by the corporation."
- They still experienced "severe sales resistance" so on April 15, 1955, identical telegrams were sent to Alfred P. Sloan, Jr., chairman of the board; Harlow H. Curtice, president; and Henry M. Hogan, chief counsel, General Motors Corp., asking if it were the policy "to require Chevrolet dealers to purchase and deal exclusively in General Motors accessories, and whether or not it is General Motors' policy to equip all 1955 Chevrolets at the factory with General Motors heaters."
- 2901 The reply from Mr. Hogan said, in part. "It is not the policy of General Motors Corp. to require Chevrolet dealers to purchase and deal exclusively in any General Motors accessories or products including heaters.
- "Also, it is not the policy of the corporation to equip all 1955 Chevrolet passenger cars and trucks at the factory with General Motors heaters."
- Equipment is installed only on order from the dealers. Hogan, however, asked Mr. Schofield to submit any "specific information and facts, relating to specific instances," that he might have.
- Mr. Schofield said: "While it is extremely difficult to obtain this sort of information requested by Mr. Hogan due to dealers' feat of reprisal

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should their names be used, we were, nevertheless, able to furnish certain information which was relayed by our attorney's letter of May 19, 1955, to General Motors. In that letter our attorney informed General Motors that he had personally made calls with our Chicago representative on several of the largest Chevrolet dealers in the Chicago metropolitan area, and had found that while they were interested in using the Schofield heater they had been unable to obtain 1955 Chevrolets without heaters."

Mr. Schofield then quoted from the attorney's letter to GM, setting forth specific complaints, not only from the Chicago area but the Kansas City, St. Louis, Boston and New England areas as well.

2902 After waiting a month, during which time two telegrams were sent to GM asking for a reply, they contacted their Senators and Congressman asking for help.

After a further followup by Schofield attorneys, a letter from Mr. Hogan, dated June 23, was received. He reiterated their policy of installing equipment only on order from the dealers and said Schofield representatives "either implied or represented to Chevrolet dealers, at a time when heaters were in short supply, that new Chevrolet cars would not have factory installed heaters." Mr. Hogan further stated "this seems to be the pattern of explanation on the part of the Chevrolet dealers mentioned in your letter."

Copies of Mr. Hogan's letter were sent to the Senators and Congressman, each of whom took up the matter with the FTC. Representatives from the Commission's Washington and Chicago offices met with Schofield people on August 4, and told them "it has been extremely difficult in the past to secure evidence to substantiate complaints similar to that which we were making. They said the Commission has been unable to get car dealers to witness against the companies issuing franchises; that it has likewise been unsuccessful in getting former car dealers to testify."

The Federal Trade Commission report to Senator Dirksen and Senator Douglas, which he presented to the subcommittee, "is indeed disappointing."

2903 This FTC report stated that all of the information upon which Schofield based its allegations was in the form of oral statements made to Schofield representatives.

Mr. Schofield said: "Our officers and attorneys advised the Commission's representatives that they were not free at that time to release certain confidential material which had been furnished them in writing. They also advised the Commission's representatives that they would get nowhere in interviewing dealers unless the dealers testify under oath. Until this is done, the Commission will be relatively ineffective in complaints of this nature. Our attorneys reported to us that the Commission's representatives had expected to be given a fully documented brief, but were told by our attorneys that we could not make their investigation for them."

2904 Mr. Schofield read from a letter from an unnamed dealer, supporting the Schofield position.

2905 Returned to the FTC report.

Name two other companies that make custom heaters for Chevrolets. He has no knowledge of their sales figures, but knows through sales representatives they are having the same difficulties.

2906 Mr. Brown agreed to testify under oath, waiving the rule that more than one member of the committee must be present.

The remainder of Mr. Schofield's prepared statement was inserted at this point.

Chevrolet dealers have told Schofield people: "Orders for cars without heaters have been returned to dealers with instructions to change the order to specify that heaters are included; prompt delivery will be promised of cars with heaters, while there will be delays in delivering cars without heaters; and that only a portion of the number of cars ordered without heaters would be delivered without heaters."

The FTC report stated: "Each dealer reported that it bought some Schofield heaters in the latter part of the 1954 model year as there was a general shortage of heaters at that time. No shortage has developed during the current model year."

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Mr. Schofield agreed that, as far as it went, it was true. "However, no reasonably prudent manufacturer would design, tool, and manufacture a product as complicated as a custom heater for an ephemeral shortage market."

2907 Further disputed Federal Trade Commission contentions along this line.

FTC found that, for three reasons, dealers preferred factory installation of heaters. Mr. Schofield denied these were valid reasons.

FTC report says dealers think Chevrolet-Harrison heater to be better than "competing heaters and that while the competing heaters were of a slightly lower cost, the price differential was not sufficient incentive to overcome the advantages of a factory-installed heater as noted above." Schofield said it is not so.

2908 Contrary to dealer-expressed opinion, it is not improper to install a competing heater in a Chevrolet. The public cannot make a choice of heaters if no choice is offered.

Schofield believes they need not see their "business rapidly crumble" if car dealers are truly independent. "Despite all the 'good' reasons which are advanced for exclusive franchises, it is our opinion that exclusive franchises destroy the dealer's autonomy and make him a vassal of the car manufacturer."

2909 Mr. Brown was sworn.

Testimony of W. W. Brown, sales representative, E. L. Schofield, Inc.

He has case histories of his contacts with dealers in the Chicago area. Although he has had other experiences, he selected 17 cases as examples. No names of dealers are used.

"Case No. 1: Subject company purchased heaters during the 1954 season. Considerable interest expressed in heaters for 1955 cars. Several sales contacts made with this firm during the 1955 season, but no sales were made because subject company was unable to purchase cars without heaters from General Motors Corp."

2910 Subsequent questioning developed the point that dealer may not have said he was unable to get cars without heaters in so many words, but may have done so by inference.

2911 In the second case, "This company placed many orders and used large number of Schofield heaters during 1954 season. Statement was made that they would use approximately 1,500 Schofield heaters during 1955 season."

2912 The company gave "every indication of the fact" they would buy Schofield heaters. A company official made a phone call in Mr. Brown's presence to a person assumed to be a GM representative asking for cars without heaters, but could not get them. Mr. Brown did not get the order.

2914 Mr. Brown tried for some time to get an order from this company, but the official "became less and less warm as a prospect, and toward the last few contacts I made with him, gave me the opinion that it probably wasn't worthwhile for him to try to buy heaters from me because the savings were not worthwhile. It was very convenient to have them installed at the factory, and so on." He does not recollect this man's ever saying the Schofield was an unsatisfactory heater.

Mr. Brown personally went through a company lot and saw that all the new cars had heaters.

2915 Described contacts made with dealers with Mr. Amidon of the subcommittee staff along. After introducing Mr. Amidon fully, one dealer said he preferred the factory-installed heaters. When asked why then he had bought Schofield heaters the dealer could not make satisfactory answer.

In another case they went to see a parts man and, before Mr. Amidon could be introduced, the man said, "Hey, Brown, what in the devil am I going to do with those 13 heaters that I have left over from the first order we gave you? * * *" At about that time he finished introducing Mr. Amidon and the parts man told them he had nothing more to say.

In talking to the boss of this firm, he said he would be able to get 5 cars without heaters, but would have to take 8 of the 13 with heaters.

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- 2916 In another case, a man who had previously bought large quantities of Schofield heaters called the zone manager in an attempt to get cars without heaters, but was unsuccessful. When Mr. Brown and Mr. Amidon called on this man, he gave them off-the-record information, "and the reason he wanted to be off the record is because, in turn, he was planning to have an agency of his own, and he made the statement that he didn't want any reprisal action to be taken. That was made in front of Mr. Amidon and myself."
- 2917 A car rental man told them he would like to buy cars without heaters but was unable to get them.
- 2918 *Mr. Robert H. Amidon, staff attorney, was sworn as a witness*
He told the committee the statements made by Mr. Brown are "substantially correct." He elaborated on some of Mr. Brown's testimony.
- 2919 In the case of the man who was trying to get an agency of his own, his attempt was to get a smaller agency. When Mr. Amidon asked if he could use this man's name, he replied, "I would like to, but if I let you use my name I know it would be hopeless to get another Chevrolet dealership, and it is a pretty good business."
- 2920 At this point Mr. Brown's statement giving 17 case histories of contracts with General Motors dealers was inserted. It was thought unnecessary to go into the details as they were similar in substance to those already discussed.
- Statement of John W. Duke, general manager of Auto Supply Co., Inc., Nashville, Tenn., accompanied by Harold T. Halfpenny, counsel for National Standard Parts Association*
- 2921 Statement of identification.
- 2922 They are probably the largest automotive wholesaler in the area.
It was his feeling that in appearing before the subcommittee he was "committing suicide." He said: "I am of the opinion that I will face reprisals from the division of General Motors with which my company does business, and the AC spark plug division. Then, too, when I return I must face the wrath of many friends who are stockholders in this corporation."
Because of his appearance, he stands "to lose a lot and at this moment the advantages are purely speculative." But he felt he must come, as he is president of the Nashville Automotive Wholesalers, and a member of the legislative committee of the Automotive Wholesalers of Tennessee. The statement was approved by the board of directors of the Tennessee Wholesalers.
- Mr. Duke said: "Some 2 years ago I first communicated with the Department of Justice, the Federal Trade Commission, the Department of Labor and our Senator Kefauver. At that time I expressed the belief, and I have not changed it, that GM's present plan of parts distribution was in violation of a cease and desist order issued back in 1941. I also stated I felt that certain practices they were engaged in were monopolistic and not in the best interest and welfare of the public. I also feel that the wholesale distribution of automotive parts in interstate commerce is covered by the fair labor standards act notwithstanding that administration bulletins have specifically exempted the car and truck dealers and in so doing have placed a financial burden on the wholesale part jobber."
- 2923 Believes the automobile market is greatly overextended, that there is overproduction as well as overselling, and that the "pressure is on the dealer by the car manufacturer to take the cars and then do something with them."
- 2924 Explained how the GM wholesale parts distribution plan has hurt him by explaining how the GM functional discount on parts works.
- 2926 GM has used "an economic squeeze" to "coerce" dealers into buying from them. He believes this violates the FTC cease and desist order.
Discussed the background of GM's decision to get back into the replacement parts business, referring to the practices in effect immediately prior to the war.

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2927

During the war, the major producers went into defense work, but many small independent parts manufacturers continued production on a limited scale. "During this period the car-truck dealers were our best customers. These car dealers found themselves installing replacement parts of identical quality and often the identical part," but bearing the name of an independent manufacturer.

"Even the most skeptical car owner who had always been led to believe that anything but a genuine part was of inferior quality saw that this unknown part did its job and the prestige of the so-called 'genuine parts' had lost its identity."

He cannot understand why the Government has allowed this advertising of "genuine parts" to continue. "This misnomer and false advertising has been to the detriment of independent wholesalers for years."

After the war GM again started the manufacture of consumer goods. "They must again start from the bottom in retelling their story that only 'genuine parts' fit properly, give the performance, and that their warranty is void if they do not use GM genuine parts."

2928

In an attempt to regain the parts after market, GM "busted the resale price to the bottom."

2930

General Motors helped to get its dealers to participate in its parts distribution plan by selecting independent wholesalers to participate in the plan. He would not be interested in this GM plan, however, "for, at best, it would only be attractive until the dealer organizations insisted that it be stopped. GM protected itself by reserving the right to repurchase the stock, cancel it under certain conditions, not make the franchise transferable and withdrawable at their bidding."

He believes the larger a company the more its chances to engage in monopolistic practices. "A concern the size of GM can use a \$10 million war chest and with our present tax structure the Government would contribute indirectly the larger part of such a sum. GM could, at its will, knock out, as competitors, one by one, any segment of the industry which supplies it or the other car manufacturers."

An example cited was the Stant Manufacturing Co., a supplier of oil, radiator, and gas caps. When GM decided to offer caps to wholesalers, they reduced comparable prices from 8 to 15 percent, and Stant had no choice but to follow suit. He said, "I haven't seen Stant's operating statement, but I doubt that they had a profit in excess of the amount they had to cut to be competitive in the face of rising costs of raw materials."

2931

He also related a story of GM's buying up rebuilt fuel pumps and burying them in a field.

GM markets auto lamps as a "genuine" GM part, but the boxes showed they were made by Westinghouse. GM markets these lamps from 10 to 25 percent lower than Westinghouse or General Electric, although they are the same.

2932

He feels it will not be long before the prices of the AC (GM) lamps will be raised, however.

It is possible GM has been obtaining the lamps from Westinghouse at a low price, ostensibly to be used as original equipment, then diverting them to the replacement market.

GM tries to keep rebuilt engine blocks off the market by getting old ones on trade-ins and then destroying them.

2933

Many of the parts GM advertises as "genuine" are not, because they originated with some other manufacturer. A fender, for example, would be genuine because GM made it.

He does not know of any special tests or checks GM makes that other manufacturers in the replacement market do not make.

2934

Discussed GM's discount plan, pointing out that the discounts given on captive parts were about half those given on competitive parts. "I have every reason to believe that Ford, Chrysler, and the other motor manufacturers are watching with interest GM's progress in its practice and if GM is not halted, these other motor manufacturers, too, will have a similar plan; in fact, Ford has announced a parts program of incentive rebates."

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When it sold a fleet of diesels, GM's truck and coach division gave a 100,000 mile warranty "with the restrictions that only genuine GM parts be used and the work done at their authorized dealers." This type of practice causes independent truck builders to go out of business or merge.

2935 "If GM expands, it receives a large part of its costs in tax writeoffs or rapid depreciation. Its size permits it to borrow money to expand into the financing and insurance business at the most favorable terms, and the interest is deducted as a business expense * * *. It has the protection of public opinion because the newspapers and magazines would not dare offend them lest they be denied a share of their advertising budget. Their directors are so intermingled with other industries that they are in a position to dictate our economy."

The motorist is protected from GM through the tire dealers because "they, too, are giants."

Mr. Duke suggested that the public and the industrial economy might be better served by establishment of a regulatory commission of the motor industry similar to the ICC or FCC.

2936 He also believes "the best interests of the public would be served if GM and the other giants were divested of their finance business, intermingling of directorships, and ownership in dealerships * * *."

Statement of L. E. Creel, Jr., legal adviser to the Bureau of Litigation Federal Trade Commission; accompanied by Donald P. MacDonald, attorney

2937 Statement of qualifications.

He was "assigned as counsel in support of the complaint *In the matter of General Motors Corporation and the AC Spark Plug Company*, docket No. 5620." Mr. MacDonald had also testified regarding this matter.

The FTC on November 17, 1948, issued its complaint against GM and AC Spark Plug Co., a wholly owned subsidiary, charging these companies with price discriminations in violation of the Robinson-Patman Act and with exclusive dealing practices in violation of section 3 of the Clayton Act. "(The complaint also charged resale price maintenance in violation of section 5 of the Federal Trade Commission Act, but the complaint was dismissed as to that charge in view of the passage of the McGuire Act during the pendency of the proceeding.)"

The practices complained of were in "connection with the sale and distribution of AC products, which included spark plugs, cables, fuel pumps, fuel-pump parts, oil filters, oil-filter cartridges, and oil-filter elements. General Motors was 1 of the 3 largest concerns manufacturing these products, the other 2 being Champion Spark Plug Co. and the Electric Auto-Lite Co. Together these 3 firms produced and sold 90 percent of the spark plugs produced and sold in the United States. The remaining 10 percent of production was divided among a number of other small producers. In addition, about 98 percent of all cars made in this country had AC fuel pumps as original equipment."

On July 10, 1953, the FTC "issued an order requiring General Motors to cease and desist from engaging in certain of the price discriminations challenged in count I, and to cease and desist from using the exclusive dealing contracts challenged in count III. The allegations with respect to the other price discriminations, charged in count I, and with respect to the allowances alleged to have been in violation of section 2 (d), were dismissed. On December 29, 1950, prior to issuance of the order, AC Spark Plug Co. was dissolved and its business was continued by General Motors acting through the AC spark plug division."

2938 AC products were sold for original equipment at much lower prices than those sold for replacement parts. "These pricing practices were alleged to give rise to three areas of discrimination: (1) Between different purchasers buying for original equipment; (2) between purchasers buying both for original equipment and replacement and purchasers buying only for replacement; and (3) between different purchasers buying for replacement. Only the latter area of price discriminations was found to be unlawful."

Discussed these allegations in more detail.

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- 2939 As a result of GM's pricing practices, "Substantial discriminations resulted between (1) purchasers buying directly from respondent; (2) purchasers buying indirectly from respondent; and (3) purchasers buying directly and purchasers buying indirectly from respondent; and in each of these three categories, the unfavored purchasers were in competition with the favored purchasers.
- 2940 "The Commission found that there was competitive injury to the unfavored purchasers in each category," and rejected the contention of GM "that such discriminations were justified on the basis of good faith meeting of competition." Also rejected the contention that these discriminations "were functional differentials, reflecting compensation for the alleged differences in services performed, and hence not subject to the act, notwithstanding the injury to competition."
- Also prohibited by the cease and desist order were exclusive dealing contracts. "Until 1940, the requirement of exclusive dealing was written into General Motors' distributor contracts. In 1940 and thereafter, the exclusive dealing requirement was eliminated from the contracts, but General Motors continued its exclusive dealing policy.
- "In 1940 this policy was made known to its distributors in an official statement. In the war years the policy more or less lapsed because of the demand-supply situation. In 1946, however, General Motors revised its policy and granted special prices to some distributors in consideration of their dealing exclusively with General Motors. It also threatened some distributors with contract cancellation if they did not conform to the policy and a number of such contracts were cancelled for nonconformity. However, not all of General Motors' distributors were forced into exclusive dealing."
- GM filed a report stating its compliance with the order on March 31, 1955. However, the FTC ordered a field investigation to determine if it were in fact being complied with. The investigation is still pending.
- 2941 The complaint issued in 1948 was based on current practices, "but, of course, the charges and the evidence and the order all covered past practices." It brought the complaint up to date.
- Discussed AC pricing practices for spark plugs.
- There was evidence presented that smaller independent manufacturers were unable to "sell either at cost or below cost for a considerable period of time," and were unable to get into the market. Some of them were driven out of business.
- 2942 They had a "somewhat unique arrangement" with International Harvester involving a sliding scale for pricing.
- 2943 One rebate check International Harvester received from GM was for \$82,122.04. To the best of his knowledge, this rebate practice was not general.
- At one time in 1940, "the warehouse distributors' net price after all discounts was 26.2 cents, and one of the national distributors, Goodyear Tire & Rubber, was 23.5."
- 2944 There was quite a difference in prices GM charged distributors and direct jobbers.
- Read from statement of policy on exclusive dealerships issued by GM in 1940.
- Explained a rider agreement attached to GM distributor contracts, showing exclusive dealing.
- Inserted in the record the two documents mentioned.
- 2950 Inserted in the record the Federal Trade Commission findings and order in the case.
- 2960 Inserted in the record a document issued by AC division for guidance of its distributors, "telling them that they get a special price for being on an exclusive basis."
- 2961 The order issued on July 10, 1953, is not final—a violation of the order must first be shown to obtain a decree of affirmance and enforcement. Even if the decree were thus obtained, it would not be possible to impose a penalty for violation then and there. If a violation were shown, they would only be in contempt of the court's order.
- 2962 Mr. Creel personally agrees with the Commission's recommendation "that the Clayton Act be amended so that the orders under the Clayton Act would be final as they are under the Federal Trade Commission Act."
- If a cease and desist order under the Clayton Act is to become enforceable, the FTC must take the initiative

A STUDY OF THE ANTITRUST LAWS

TUESDAY, NOVEMBER 8, 1955

UNITED STATES SENATE,
SUBCOMMITTEE ON ANTITRUST AND MONOPOLY
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met, pursuant to notice, at 10:10 a. m., in room 424, Senate Office Building, Senator Joseph C. O'Mahoney presiding.

Present: Senators O'Mahoney (presiding), Wiley, and Langer.

Also present: Joseph W. Burns, chief counsel; Donald P. McHugh, assistant counsel, Joseph A. Seeley, assistant counsel, Gareth M. Neville, assistant counsel, and Jesse J. Friedman, economic consultant.

Senator O'MAHONEY. The committee will be in session.

Let me announce to the television operators that the rule of this committee has been from the very outset that television with the lights would not be allowed, because the lights are frequently an annoyance to witnesses.

It is very important in the view of the committee that witnesses should be so treated by the committee that their testimony can be given without any interference likely to disturb them, either in making original statements or in answering questions.

I understand that you gentlemen of the television, however, were permitted to erect these lights and put your cameras in place before my approval this morning, so we will make an exception for the beginning of this session.

With the understanding, however, that the pictures will stop after the opening statements have been made, we will allow you to remain and take such as you can get during the opening statements of the acting chairman and those Senators present who desire to make comments.

If the United States is to lead the world to peace and freedom, it must first successfully stabilize a free economy in this Nation.

The hearings which open today are an attempt to continue the review of the antitrust laws which was initiated in the summer of 1953 by the present Attorney General of the United States, Mr. Herbert Brownell, Jr. The committee which he appointed consisted of lawyers, economists, and professors. Their report was submitted to the Congress on March 31 this year, and the Antitrust and Monopoly Subcommittee of the Senate Judiciary Committee, headed by Senator Harley M. Kilgore of West Virginia, has been studying that report ever since. Many hearings have been held, at which the heads of great business corporations, including corporations engaged in the automotive industry, have testified, and today we launch a study

of the General Motors Corp., the largest manufacturing company in the world.

I have noted in the press and in some communications which have been received by our staff a suspicion that it is the purpose of this committee to institute a prosecution of General Motors, and I want to make it clear at the outset that this is not our purpose.

The first antitrust laws were written at a time when agriculture rather than industry was the dominant calling of the American people. No one doubted at that time that combinations in restraint of trade should be prohibited or that contracts which were made for the purpose of restraining trade or creating a monopoly were unlawful. That was the traditional conviction of the American people and, when the Constitution itself was written, the drafters of that instrument, seeking to erect a popular government, or as Abraham Lincoln described it, a government "of the people, by the people, and for the people," placed all legislative power in the hands of Congress. Then to make certain that Congress should have the power to regulate the economic affairs of the people as well as their political affairs, and to protect them from abuses from any source, the writers of the Constitution provided in section 8 of the first article of this great document that Congress should "have the power to regulate commerce among the States, with foreign nations, and with the Indian tribes."

From the very beginning, whenever Congress attempted to assert this power, the business to be regulated always resisted. When the First Congress wrote the act to regulate commerce by water among the States and with foreign nations, the industry to be regulated carried the case to the Supreme Court. In that tribunal, however, in the famous decision of *Gibbons v. Ogden* written by Chief Justice Marshall, whom no one would dare then or now to call a radical, namely, John Marshall, it was held that the power of Congress to regulate commerce was complete—plenary was the word that the great Chief Justice used—including transportation of passengers as well as transportation of freight, and that the power extended even to that commerce wholly within a State which affects national or international commerce.

No one will deny now that big business in the United States does affect all of the domestic and foreign commerce in which our people are engaged, and upon which they depend for their employment, for their profit, for the commodities which they desire to use.

Every State, every community, whether a big city or a tiny village, is affected by this commerce. Particularly is this the case with respect to the automotive industry. That it is of the utmost importance for Congress to study the effect of big business upon the life of the people was clearly indicated by the testimony before this committee by Judge Stanley N. Barnes of California, now the head of the Antitrust Division of the Department of Justice. He told our committee that in his opinion "producer concentration lies at the heart of the antitrust problem in the automotive industry." Those were his words.

He told the committee how he gave his approval to the merger of the Studebaker and Packard corporations, and the merger of Hudson and Nash. Nobody on the committee had any doubt that he gave this approval because he believed it was necessary that these four companies should be strengthened by combination if they were to be saved from economic death. At about the same time, the Federal Trade

Commission gave its approval to another merger in the automotive industry, namely, that of the Kaiser and Willys companies. The reasons were the same.

It was clear, however, that what Judge Barnes did was merely to assure the managers of these respective original companies that he would not institute prosecution under the antitrust laws if they were to combine.

It was clear also that what the Federal Trade Commission did was to exercise the delegated power of Congress, and to say that it would not prosecute the merger of Kaiser and Willys.

Nobody on the committee expressed the slightest criticism of the action of Judge Barnes, and we do not now.

Nevertheless, it was clear that the decision here made was merely the decision of a man that those mergers would not violate the antitrust laws. It was not the application of a clear law.

Big business has complained for years that the antitrust laws are vague and uncertain and that they should be more clear. It is evident that business has grown to such an extent, mergers have been taking place with such rapidity, and economic power is being concentrated in fewer and fewer hands to such a degree, that the legislative and executive power of this Nation should come quickly to an understanding as to a formula for clarifying the antitrust laws by which we can stabilize our economy.

It has been the judgment of this committee that that is precisely what the Attorney General was seeking to do when he selected, by his own choice, these lawyers, these professors, and these economists who made the report which this committee, on application to the Department of Justice, finally secured.

Big business should have definite rules to mark its powers and its responsibilities. The people and small business should also have definite rules which will guarantee that they will not be snuffed out of existence by the abuse of the power of giant industrial combinations, or even from their size and inherent power; and it is clear to every constitutional lawyer that there is no legislative force in the country which can write these rules except the Congress of the United States. Heretofore, business has done a pretty big job in writing its own rules, because it receives its charters when it is organized into corporations from the States and not from the Congress.

What we on this committee seek is a formula by which all segments of the American economy, local, national, and international, may work together and prosper with mutual confidence in each other.

Congress must accept a large share of blame because the present concentrated control of our economy has grown so great. It is only necessary to point out that no corporation can exist unless created by the authority of some government. The population of this Nation and of the whole world is made up of natural persons, but the corporations are artificial persons created by authority of law.

The anomaly of our time, as I have already indicated, is that, although the Federal Constitution vested the regulation of interstate and foreign commerce in the Congress and took the power to regulate that commerce away from the States, these same States continue to create the corporations that carry on interstate and foreign commerce which they cannot regulate in the public interest, and the public interest comes first.

There is now pending in the Federal court in Colorado a suit brought by the General Motors Corp., which is a Delaware corporation, attacking the constitutionality of a Colorado law passed by the Colorado Legislature this year seeking to protect automobile dealers in Colorado against the 1-year unilateral contract by which their economic existence hangs.

When a corporation, organized in one State, which operates throughout this land and across the seas, can enter the Federal courts in the attempt to destroy the statute of another State enacted to protect its own citizens, it is evident that the question of bigness is with us and must be settled.

I have no hesitation in saying that if it is not settled, if we are unable as a people and as a Congress to stabilize the economic law and keep it free, we shall be unable to convince any nation in the world that we are the spokesmen of liberty.

In opening this hearing I wish to invite the executives of General Motors to sit around this table with its own chosen representatives to discuss this problem with our members, our staff, and with the people and with the witnesses.

It has been said in the press that we made some mistake in asking Mr. T. K. Quinn, former vice president of General Electric Corp. and now president of Monitor Equipment Co., of New York, to testify. It has been said by some who fear to take off the blindfolds and look boldly at the facts that Mr. Quinn has changed his mind. I know of many others who have changed their minds, and I know that they resort to personalities will not help us in the slightest degree to solve this problem. What we need are facts and considered opinions without emotion.

I want to make it a matter of record, however, that before the witnesses for today were announced, our staff diligently sought to persuade professor of business economics of the University of Michigan, Clare E. Griffin; Dean Russell A. Stevenson of the School of Business of the University of Michigan; and Professor of Economics Lawrence Seltzer of Wayne University in Detroit to testify. These gentlemen a few years ago made a study of General Motors for the Brookings Institution, the well-known private economic research organization whose headquarters are in this city.

The Brookings Institution thought that the question of size in economic organization was a matter of such importance that it should be studied by the experts of that institution.

These gentlemen whose names I have given were invited by Brookings to participate, and a few years ago they made the study of General Motors.

They told us that they gave a pledge of confidence both to Brookings Institution and to General Motors not to reveal certain facts which came to their attention. Our staff assured them that we would honor that confidence, that we would not ask them to name any individual who had given them any confidential information. While I support the staff in its assurances, I still feel that it would be most helpful to the members of our committee, and to the Congress, if we could have made available to us the results of the study by these well-known and very capable economists.

We have letters from the professors and from Brookings Institution, and we have a telegram from Henry M. Hogan, vice president and general counsel of General Motors Corp., all of which express the feeling that there is a bond of confidence which should not be broken.

I append hereto a telegram which I sent yesterday to Brookings Institution in which I assert the belief that we should feel certain that the Congress, which the Constitution makes the umpire of fair dealing in commerce, is entitled to the cooperation of the Brookings Institution and of the professors we invited to testify with respect to the effect of big business on the national economy.

I make this statement to show that our committee has made every effort to gather information reflecting every point of view, and to dispel the misconception conveyed in some newspapers that the committee has been unfair to General Motors and not impartial in this study.

I am glad to be able to say, however, that the members of the staff have assured me that they have received cooperation at the hands of the executives of General Motors when they visited the various offices of these executives. We have no complaint upon that part.

This is the telegram which I sent yesterday, on reading the letter from Brookings Institution. It was addressed to Mr. Robert D. Calkins, Brookings Institution, 722 Jackson Place NW., Washington 6, D. C.:

The staff of the Senate Antitrust Subcommittee, as you know, in October requested Dean Russell Stevenson of the University of Michigan, Prof. Clare Griffin of the University of Michigan, and Prof. Lawrence Seltzer of Wayne University, to testify before the Subcommittee on Antitrust and Monopoly of the Senate Judiciary Committee. As indicated by your letter to Chief Counsel Joseph W. Burns dated November 4, 1955, you are aware that Mr. H. M. Hogan, general counsel of the General Motors Corp., "has indicated that if the corporation is requested to do so by the Brookings Institution, it will waive any pledges of confidence made to them and will ask for a waiver from any personnel or any suppliers of information which were consulted."

These quoted words I took from the letter of Brookings Institution.

Prof. Clare Griffin, in a letter dated October 26, 1955, to Mr. Burns said that at the time he and Dean Stevenson interviewed officials of the General Motors Corp., they acted as staff members of the Brookings Institution. Professor Griffin also advises that at the time those interviews were made "the top officials of a limited number of large corporations agreed to cooperate with the Brookings Institution in its study of the economic and social significance of big business."

Our staff has indicated to all the professors involved and to you that it is not our purpose to ask these professors to reveal the names of people who furnished them information or the specific replies made by any of the persons interviewed. Our only object in this study is to secure the best information available to us of the economic and social significance of big business. That is a function which the Constitution placed under the exclusive jurisdiction of the Congress, which is the only branch of government, State or Federal, which has the power to regulate commerce among the States and with foreign nations and with the Indian tribes. It seems clear from the letters we have received from you, from the professor, and from the wire sent by Mr. H. M. Hogan, general counsel of the General Motors Corp., that a fear is entertained that the purpose of the committee is somehow to institute antitrust proceedings. I can assure you that my position has not changed since I was chairman of the Temporary National Economic Committee, and that I would be glad to recommend abandonment of all Government charges of violation of the antitrust laws by big business, if by so doing, we could bring about a full public disclosure of the methods and practices of big business. We want no names, we want no quotations from what may have been stated by General Motors officers, employees, or supplies. We want only basic facts as to the manner in which this business is carried on in

interstate and foreign commerce, the economic area which the Federal Constitution has vested in the Congress of the United States, for regulation.

I am confident that upon reviewing the requests made by members of our staff and the conversation you had with them, it will be your desire to release the gentlemen in question from any inhibitions they may feel so that the Congress of the United States and the people of this country may have the benefit of the objective study of big business which your institution recognized as a problem of such significance that you undertook to study it.

This I signed as acting chairman of the Subcommittee on Antitrust and Monopoly of the Senate Judiciary Committee.

I have received no response as yet from this telegram. The staff has received no response?

Mr. BURNS. Not yet.

Senator O'MAHONEY. I hope that a response will be forthcoming before the day is out.

Senator WILEY, do you have any statement?

Senator WILEY. Mr. Chairman, I am glad to compliment you on your statement, and I want to follow with a few remarks with regard to the purpose of this phase of the subcommittee's work.

Unfortunately, I will have opportunity today of attending only a small part of this particular session. I have to leave. I am scheduled right now to fulfill a series of engagements in my home State, and am taking the 12 o'clock plane.

I shall, of course, follow the work of the subcommittee as I have in the past, with the deepest of interest, and will join with you again at the earliest opportunity.

I believe that the phase which is opening today can render a most important contribution to our subcommittee's overall work, and I trust you will get a favorable reply to the wire you have sent, sir.

It can, I believe helpfully illuminate problems which may exist today not simply in one industry but in many industries—this hearing, I am speaking of.

I know that it is the purpose of our chairman, of our colleagues, and of the staff to get the most objective possible testimony, especially during this phase of our hearings.

I hope that if there are any deficiencies, any omissions in this testimony, as it is presented, that expert witnesses will willingly step forth, as the chairman has invited, to help fill in any gap.

I want the best possible balance of competent witnesses to submit their views on all phases of the problem before us.

An underlying purpose of this committee's study is, of course, as you have stated, and well stated, to assure for American business as definite, accurate and as complete an understanding as possible of the rules under which it must operate.

The plain fact is that American business today experiences very considerable confusion and uncertainty as to interpretation of the various antitrust laws. It is an axiom that no one can possibly comply with the letter and spirit of the law if he does not have a reasonable opportunity to understand that law.

You stated, sir, when we first opened up this hearing, and I must say that in 1890, when the first antitrust law was passed—and it was passed by a Republican Congress—our economy was quite different from what it is today.

I cannot help but say that even 17 years ago when I came to Congress, we had a national income of \$70 billion. Now we have a national income of \$327 billion.

We had a gross national product then of about \$90 billion—that is only 17 years ago; now we have a product of close to \$400 billion and of course, bigness is a relative term; but in my understanding of the language, bigness is what power is lodged there, what power for good or evil.

Certainly, if in 1956, the Congress is going to try to make the rules for competition still more effective and certain, it is necessary to understand how our complex economy—with its \$400 billion of gross national product—actually runs today. Accordingly, it is necessary to study the relationship of the technological advances which have resulted in big business—their relationship to the needs of our people, and of our Government, of national defense.

With respect to our Government, let me say that one key factor which we must never forget is the role which enterprise—large or small—plays in connection with the vital national defense program.

Now, finally, I would be less than frank if I failed to refer to this fact. I feel a deep sense of obligation, as I feel any other thinking person would, to make sure that, although we are fast coming upon a highly political election year, that we keep partisan politics or any political consideration whatsoever, out of these and related hearings.

This subcommittee has one of the most important jobs facing it of any subcommittee in the 84th Congress.

Our job basically is to recommend legislation. I hope that we will be in a position to do so in a completely nonpartisan fashion, so that out of the important effort which has been made will emerge sound and enduring statutes which will best serve the changing needs of the American free enterprise system.

We have under our chief counsel, Joseph W. Burns, a staff which was well selected with the standard of its technical competence in this vast field of law, and one which has, I believe, tried to carry out its mission in a factual, objective way.

I am happy this morning, Mr. Chairman—after listening to your statement, which I think has straightened out some of the misconception that has been published in the press about the objectives of this committee, and also, I think, about the standard of the men who constitute it—to make such a comment. You have well phrased it this morning, that we are here to do a constructive job.

With these comments, therefore, I conclude with the hope that there will be complete cooperation with the subcommittee, so that it can come up with a sound, well-balanced and completely factual and helpful record.

Thank you, Mr. Chairman.

Senator O'MAHONEY. Thank you, Senator Wiley.

Senator Langer?

Senator LANGER. I have no comments, Mr. Chairman. I think you know my position.

Senator Wiley mentioned politics. I do not think there has been any difference really whether it has been a Democratic or Republican administration. The antitrust laws have not been enforced; they have been a joke.

In 65 years, not a single man has been put in the penitentiary for violating the Sherman Antitrust Act or the Clayton Act. It does not make a bit of difference whether you have a Republican administration or a Democratic administration; the result has been the same.

I am glad we are having this inquiry, and I hope that we may get somewhere with it.

Senator O'MAHONEY. Thank you, sir.

Mr. Burns, chief counsel of the committee, you have an opening statement?

Mr. BURNS. The task of this subcommittee is to appraise the antitrust laws to determine, first, what their objectives should be, and, second, whether any amendments are needed to make these laws more effective instruments for accomplishing these objectives.

One of the major questions included in this task is what the national antitrust policy should be with respect to big business.

A responsible body of opinion points to the very high standard of living which we now enjoy, and attributes it in large part to the technological and mass distribution achievements of large corporations.

Conversely, another responsible body of opinion believes that the growth of large companies threatens the economic foundation of a free society.

These persons see a progressive concentration of economic power in the hands of fewer and fewer corporate giants, and a corresponding decline in competition.

Many factors in our business system contribute to, and in certain cases even necessitate or make inevitable, large size or a high degree of concentration.

We must understand how these factors operate in the case of specific companies and specific business situations if we are to deal intelligently and realistically with the fundamental purposes of the antitrust laws, to assure a healthy climate in which business may grow and prosper in the interest of the people.

To study this problem the staff endeavored to obtain from Government agencies and private organizations all available information about the larger corporations. None of the Government agencies charged with responsibility in this area have within recent years made an overall economic study of General Motors Corp.

The subcommittee decided that the General Motors Corp. would provide a useful case study of the phenomenon of bigness and concentration in our economic system. We shall seek to develop the factual information which is essential to a clear and realistic understanding of this problem.

General Motors Corp. was organized in 1908 for the purpose of combining in a single corporation a number of leading manufacturers of automobiles and parts.

Within 2 years, 26 previously independent companies were merged into the General Motors structure. The result was to make General Motors the largest producer in the industry at that time.

Today General Motors is the largest manufacturing company in the world, with approximate annual net sales of \$10 billion, net profit of \$1 billion, and assets of \$5 billion.

General Motors alone produces more passenger cars than the rest of the industry combined. It is also, by far, the most important producer of automotive parts and accessories in the United States. It is a principal producer of trucks, buses, diesel engines, and locomotives. It is a major factor in the manufacture of refrigerators, stoves, air

conditioners, and a wide range of other products. It is also the largest supplier of goods procured by the United States Government.

It will be important to trace the growth history of General Motors and to learn how and why this tremendous enterprise has reached its present size.

We wish to find out historically the relative importance of mergers and acquisitions, vertical integration, banking affiliations, certain trade practices, advertising policies and expenditures, research and development, and other factors which have contributed to the preeminent position achieved by this company and, in particular, we are interested in determining (1) whether or not the present size and scope of General Motors' operations are the result primarily of superior efficiency and competitive skill; (2) whether or not the great power associated with its size and scope, however achieved, carries with it the opportunity for abuse and (3) whether or not, without abuse, the very magnitude of the corporation makes competition almost impossible.

We are also anxious to determine whether the predominant position of General Motors is the result of technological production, distribution, or other factors required by the economic character of the industry or is the result of the company's free choice of business policies which are not economically inevitable.

This is one of the central issues involved in the relation of the antitrust laws to business size and concentration, as indicated by several court opinions in major antitrust suits brought by the Government.

Undoubtedly, the present size of General Motors is the result of a number of different factors. These hearings will endeavor to determine what these factors are, and their relative importance.

For example, General Motors has been a defendant in several antitrust suits brought by the Government. We shall study these suits to learn to what extent agreements or practices involved contributed to the present size and power of General Motors.

Did the practices and agreements involved in these suits or the cumulative effect of several of them play a significant part in General Motors' development? Were the decrees entered by the courts adequate to terminate the effects of these practices and agreements or were the advantages gained by General Motors of such a nature that they could not be dissipated by court action?

An important aspect of our study is the role played by General Motors in the manufacture and sale of automotive parts. Is the domination of General Motors in the manufacture of automobiles being extended into the automotive parts industry? Are the opportunities for small business, small manufacturers, and independent jobbers in this field being restricted by General Motors' activities?

A pertinent subject is the power exercised by General Motors over the distribution of its cars to consumers through nominally independent dealers.

Does the present franchise system give General Motors dictatorial control over its automobile dealers? Does the system handicap small automobile manufacturers in their ability to compete, and impede the entry of newcomers? Are the consequences detrimental to the public interest?

The size and power of General Motors is not limited to the automobile industry. It is a major producer of many other important products. We shall inquire into the extent to which General Motors' large size affects competition in these other industries.

Is it economically necessary or desirable for a single corporation of such size to extend its activities into diverse and unrelated industries? Would the separation of any one of these operations from General Motors adversely affect production or distribution efficiency?

We shall look into the nature of General Motors' activities in the finance field. Do these activities give it an unfair advantage over its competitors in the manufacture and sale of automobiles and other products? Have these finance operations played a significant role in General Motors' growth?

Has its wholly owned subsidiary, General Motors Acceptance Corp., profited at the expense of other finance companies because of its affiliation with General Motors?

Mr. Chairman, today we have requested Prof. Corwin D. Edwards, of the University of Chicago, to testify, to give us some of the economic background based on his many years with both the Department of Justice and the Federal Trade Commission.

Senator O'MAHONEY. Thank you.

Is Mr. Hogan in the audience?

Senator LANGER. Mr. Chairman, I want to say that in what I said I did not in any way intend to reflect on Judge Stanley Barnes. I think he has done a very good job since he has been in charge of the Antitrust Division.

Senator O'MAHONEY. Of course. Is Mr. Hogan, general counsel for General Motors, in the room?

(There was no response.)

Senator O'MAHONEY. I understood he was to be here today. I want to invite him to take a place at the table where he shall have the best opportunity of hearing what the witnesses have to say.

Is there any other executive of General Motors present, who desires to come forward?

(There was no response.)

Senator O'MAHONEY. Are there any representatives of General Motors in the room?

Mr. STENGEL. Yes, sir.

Senator O'MAHONEY. Well, please do not be backward. Won't you come forward?

Mr. STENGEL. I am very happy where I am, Senator. I am not an executive, sir. That is the reason I did not speak before.

Senator O'MAHONEY. Would you be good enough to give your name?

Mr. STENGEL. Douglas Stengel; I am the public relations representative in Washington.

Senator O'MAHONEY. You are the public relations man in Washington. Yes; I should have known that.

Very well. Senator Wiley, I thank you so much for being present. It has been very helpful, and I appreciate your statement.

Are you ready, Mr. Burns?

Mr. BURNS. Yes, sir.

Senator O'MAHONEY. Proceed.

The committee will come to order, please.

STATEMENT OF CORWIN D. EDWARDS, PROFESSOR OF BUSINESS AND GOVERNMENT, SCHOOL OF BUSINESS, UNIVERSITY OF CHICAGO

Mr. BURNS. Professor Edwards, you are now on the faculty at the University of Chicago?

Mr. EDWARDS. That is correct.

Mr. BURNS. What is your title?

Mr. EDWARDS. Professor of Business and Government in the School of Business.

Mr. BURNS. Will you tell the subcommittee how long you have been engaged in this field of economics?

Mr. EDWARDS. You mean in my present office and post?

Mr. BURNS. No, in your entire experience.

Mr. EDWARDS. Somewhere between 20 and 30 years.

Mr. BURNS. Has a great deal of that time been devoted to the problems connected with the administration and enforcement of the antitrust laws?

Mr. EDWARDS. Yes, sir. I have been an economist both in the Anti-trust Division of the Department of Justice and in the Federal Trade Commission.

Mr. BURNS. Will you give the years when you were with the Department of Justice?

Mr. EDWARDS. I joined the staff of the Department of Justice in 1939, and left there in 1944.

I joined the staff of the Federal Trade Commission in 1937 and was there until 1939. I returned to the Commission in 1948, and was there until 1953.

Mr. BURNS. During your years with both of those agencies, will you just describe briefly the nature of your contacts with the economic problems arising under the antitrust laws?

Mr. EDWARDS. In the Federal Trade Commission I was at first economic adviser to the Commission, with special responsibilities for the newly passed Robinson-Patman Act; subsequently Assistant Chief Economist.

Upon returning to the Commission I was Director of the Bureau of Industrial Economics.

In the Department of Justice I was at first an economic consultant and, subsequently, Chairman of the Policy Board of the Antitrust Division.

Mr. BURNS. In addition to your connection with those two departments of Government, have you served on any commissions or committees which have studied the antitrust problems from the international standpoint?

Mr. EDWARDS. Yes.

In 1946 I was head of the Mission on Japanese Combines which was sent to Japan to work out ways on implementing policy toward the Japanese big-business organizations.

In 1951 I was United States representative upon an ad hoc committee on restrictive business practices organized under the United Nations Economic and Social Council.

Mr. BURNS. Have you written any books or articles on various of these antitrust problems with which you have dealt?

Mr. EDWARDS. Yes, a good many articles; one book, which is published, *Maintaining Competition*.

Mr. BURNS. When was that published?

Mr. EDWARDS. 1948 or 1949, I forget which way it fell from the turn of the year.

There is a book now on the press, *Big Business and the Policy of Competition* which is supposed to be out early next year.

Mr. BURNS. Now, in connection with that study and your activities in Japan, did you find anything in the economic structure of business in Japan which provide any lessons for us in this country?

Mr. EDWARDS. The problem of concentration in Japan centered upon what were called the *Zaibatsu*. This, I understand, literally translated means money clique.

Zaibatsu were not monopolies in any ordinary sense. Most Japanese industries had 8, 10, 12, 14 firms in them. But wherever you looked it was the same firms.

Each great *Zaibatsu* corporation spread across a very large segment of the Japanese economy, and collectively this small number of firms controlled the economic life of Japan.

This was so true that two of them were reputed to have taken turns for years in designating the Minister of Finance; others had various other perquisites in the Japanese Government.

Japanese industrial legislation was drafted by the *Zaibatsu* and passed with their assent, and except on the rare occasions when the *Zaibatsu* broke with the military, they pretty well determined the course of industrial evolution there.

From observing that phenomenon, I came back with a different view about the significance of monopoly.

It seemed to me that the form which we had traditionally experienced for the concentration of economic power, that is, the large company having dominant power in a single industry, was not the only form that dominant power could take, and that one needs also to be concerned with the question of whether conglomerate business organizations, spreading over wide portions of the economy, have attained too much power.

Mr. BURNS. Have you studied, in preparation for this book or just as part of your experience, our own development of large corporations, and have you noticed indication of any danger signals about which we should be aware?

Mr. EDWARDS. It is quite clear that we do not have today the *Zaibatsu* pattern of organization.

The best measure of how close we come to it lies, I think, in those overall figures of concentration, not by industries but as against the whole manufacturing economy or the whole economy.

The most reliable recent study with which I am familiar is that made by the Federal Trade Commission which indicates the degree of concentration in manufacturing in 1950, and also compares it with 1935.

For 1950 the Commission showed that the 200 largest manufacturing companies made 40.5 percent of the manufacturing sales; that a hundred of them made 33 $\frac{1}{3}$ percent; that 50 of them made 26.6 percent; and 5 of them made 11.4 percent.

The Commission also showed that the 200 had increased their place by 2.8 percentage points since 1945.

It is obviously a controversial question as to just how far concentration of that sort can go before it creates great dangers.

It is obvious that the rate of growth reflected in the Commission's figures is a relatively slow one which, if it were to continue, would give us a place of about 50 percent for the largest 200 in the year 2000.

But it is, to my mind, very important to know at what rate and in what direction that sort of concentration is changing.

Mr. BURNS. Do you feel that we have sufficient data with respect to the concentration of industry in order to draw the conclusions which will enable us to determine what policy the country should have toward concentration?

Mr. EDWARDS. No. I think our knowledge in this field is quite defective. In the first place, there is no Government agency, either the Federal Trade Commission or any other, which carries a regular responsibility for measuring the trend of concentration at regular intervals.

The Commission has made it an interest, but has been able to do something about it only when it could secure an ad hoc sum of money for a particular study at a particular time.

There has been so little pressure behind this sort of information, indeed, that a study undertaken by the Commission, if I recall correctly, about 3 or 4 years ago has been repeatedly sidetracked and, I think, it is questioned when it will be out.

Beyond that, the concept itself is difficult. There should be an exchange of views among technical people in and out of Government, and among Government people concerned with the antitrust laws, and business people concerned with business problems as to how one best measures concentration, and what measures ought to be continuously kept current.

Particularly, we have no effective measure of the conglomerate, and we have no effective measure of vertical integration.

These are both things that present technical difficulties on which there has been no meeting of the minds.

Senator O'MAHONEY. Would you be good enough to define "conglomerate"?

Mr. EDWARDS. I mean by the conglomerate——

Senator O'MAHONEY. I am hoping that these hearings will be widely read, and I want nobody to misunderstand points which are being made by unfamiliarity with the words of the economists.

Mr. EDWARDS. I will try to speak as nearly ordinary English as possible, Senator.

I mean by the conglomerate, a company which has interests spreading across a number of different industries so that its bigness is not properly attributable only or primarily to a single industry.

Mr. BURNS. Have you any suggestion as to a specific method by which the type of necessary information can be obtained in order to enable us to make the studies which are a requisite to forming conclusions on the problem?

Mr. EDWARDS. Most of the basic information now reaches the Bureau of the Census regularly.

The Federal Trade Commission has adequate statutory powers to get any information that is not thus obtained. The problem is primarily one of spending very modest sums for processing what the Government already gets in order to throw light on new problems.

Mr. BURNS. Mr. Chairman, I think that Professor Edwards has indicated one of the sources of information from the Bureau of the Census which we have discussed, and which our subcommittee should endeavor to make arrangements to obtain.

Of course, it may require additional appropriations for the Bureau of the Census, but if economists who are keenly interested in this subject indicate that we are lacking in the final data which are available in rough form, probably the subcommittee should endeavor to have that information made available.

Senator O'MAHONEY. Perhaps it should be made a part of the record. When the Department of Commerce appropriation was under consideration in the Senate in the last session, a question arose as to whether or not such sufficient appropriations had been made to secure some pertinent data from the Census of Manufacturers.

The Bureau of the Census, of course, and its Director, have a problem of finance. They wish to know whether when they undertake a particular study or the assessment of figures that they shall have a sufficient amount of money to carry through the project to a conclusion.

The assertion was made upon the floor of the Senate by Senator Holland, of Florida, who was in charge of the bill, that if this particular study could not be accomplished with the funds appropriated, the committee would gladly undertake in the consideration of the deficiency bill to see that the work went through completely.

I think we shall probably have no difficulty in the next session of Congress in obtaining funds for the Bureau of the Census to make available to the people of the United States the statistics which have already been gathered in the Census of Manufacturers, and which will indicate the degree to which concentration of the economy has proceeded in the United States.

Mr. BURNS. Now, Professor Edwards, how does the power associated with large size manifest itself in the business world?

Mr. EDWARDS. In many different ways, Mr. Burns.

Mr. BURNS. Will you illustrate some of the ways that you have found from your experience that it is manifested?

Mr. EDWARDS. A large company is an aggregate of financial strength. This strength is felt by suppliers, by distributors, by the Government, by all who deal with the company. It shows itself in different ways with reference to these different groups.

In dealing with suppliers, for example, a big company is usually in a position to make its own determinations if it thinks that is worth while.

The possibility of self-supply puts the company in a position where it can strike hard bargains with its suppliers.

In a good many circumstances, that may mean that the supplier has an incentive to give a special low price for a specially attractive service or something of the sort.

Senator O'MAHONEY. Would it be appropriate to say that the familiar rule of business that the customer is always right can be translated in this circumstance to mean that the big customer is particularly right?

Mr. EDWARDS. It often works out that way, Senator.

Senator O'MAHONEY. Whatever the facts may be.

Mr. EDWARDS. In dealing with distributors, some big companies are in the position to name the policies of the distributors in great detail.

The distributor may be given quotas to sell, even if he can sell them only at cut prices. He may be required to sell along particular ways, and according to particular policies.

He may even, on rare occasions, I think, and he has been, required to adopt policies that have little or nothing to do with the article he sells. There is in history, for example, an instance of one company's distributors who were required to handle a newspaper expressing the views of the head of the large manufacturing company that supplied them.

In dealing with Government, the big company has certain special technical capacities. It can maintain a large enough staff at the seat of Government to know when issues are going to arise before agreeing who will make the decision, and when he will make the decision, and to bring to bear upon him exactly the materials which will be most pertinent and influential in stating the company's point of view.

This can be so important at times that a former chief of mine once defined big business for operative purposes as one large enough to have a Washington office.

Those are illustrations; I think there is no point in elaborating further.

MR. BURNS. In the book that you referred to, which you wrote, entitled "Maintaining Competition," you made this statement at page 945:

When one enterprise is large, there is a question whether an increase in the size of its rivals makes the market more or less competitive. On the one hand, every such increase reduces the total number of enterprises and increases the incentive to adopt collusive and restrictive policies. On the other hand, as disparities in size and power are reduced, coercive leadership by the large concern becomes less probable, but the choice between 1 monopolist and 2 or more quasi-monopolists is not a choice between monopoly and competition.

Will you illustrate those principles by reference to the present structure of the automobile industry?

MR. EDWARDS. Well, as you know, Mr. Burns, I have made no special study of the automobile industry.

On the other hand, as was noted in the chairman's opening remarks, there have been difficult problems for antitrust agencies in recent years as to whether they should regard mergers among second-line automobile companies as contributing to competition by strengthening those companies against the largest ones or as detrimental to competition in the sense that they reduce the total number of different manufacturing interests in the industry.

MR. BURNS. Do you know whether either the Federal Trade Commission or the Department of Justice has made any overall economic study of the General Motors Corp.?

MR. EDWARDS. I can speak with some confidence as to the Federal Trade Commission, that there has been no such study. There had been none in the Department of Justice while I was there, and I know of none since.

MR. BURNS. Now, in general, would you say that the relations between large companies competing with each other in the same industry differ markedly from the relations between these companies and their smaller rivals?

MR. EDWARDS. If I understand the import of the question, the answer is "Yes, I think they do differ, as I see it."

In an industry which has a few large companies and many companies very decidedly smaller, the small companies are seldom in a position to afford much effective check on the policies of the large, whereas the large are in position, if they are competing with each other, to check each other very much.

May I add one more thing: I should like to make clear that I assume the relationship in which there was a big gap between the big and the little, and there can also be cases of kinds of a staircase gradation in size to which my remark was not intended to apply.

Mr. BURNS. In the situation where there are a few large companies in the field, does the nature of the competition take on more or less of the aspect of live and let live?

Mr. EDWARDS. It sometimes does, not always. I think the assumption that academic economics sometimes makes that therefore the relationship between them must be that which is described as oligopoly, that is, of mutual forbearance, is an oversimplification.

Mr. BURNS. I assume you are familiar with the theory of "countervailing power" which was advanced by J. K. Galbraith in a book published a few years ago. Do you agree with the theory that he expressed there?

Mr. EDWARDS. It happens that I have discussed that theory in the forthcoming book to which I referred. May I read into the record a short passage from the discussion?

Mr. BURNS. Certainly.

Mr. EDWARDS (reading) :

The countervailing power stressed by Professor Galbraith as a system of checks and balances alternatives to competition does curb the power of some large companies in some circumstances. But such checks and balances do not mesh very well. Concessions obtained by large buyers tend to be discriminatory and not to protect small buyers. The biggest manufacturers tend to sell to small distributors, the biggest distributors to buy from small manufacturers when the big deal with the little countervailing power is at a minimum.

Moreover, the compromise between powerful antagonists does not necessarily protect the interests of third parties. A big union and a big company may agree upon a wage increase for which funds are to be provided by a price increase unwelcome to small consumers who have no adequate countervailing power. Thus countervailing power is an insufficient principle to assure a balanced economic performance.

Mr. BURNS. In another recent book by David Lilienthal entitled "Big Business: A New Era," he makes this statement:

One of the attractive aspects of modern big business is that it creates opportunities previously nonexistent for a multitude of small-business enterprises, and broadens the area wherein small businesses can find opportunities that are neither profitable nor suitable for the big.

Would you comment on the significance of this statement with respect to the problems posed for the antitrust policies by business size and concentration?

Mr. EDWARDS. Mr. Lilienthal seems to me to attribute to big business all of the progressive and growing forces of our economy. My own statement would be that in a growing economy, unless it is far more monopolized than ours, new opportunities for businesses of all sizes necessarily appear in considerable abundance, and that that is a very healthy thing. To attribute that appearance particularly to big business seems to me to be a peculiar kind of oversimplification.

Mr. BURNS. In your own study which was entitled "Conglomerate Bigness As a Source of Power," which I believe was published this year, you made this statement:

An enterprise that is big in this sense obtains from its bigness a special kind of power, based upon the fact that it can spend money in large amounts. If such a concern finds itself matching expenditures or losses, dollar for dollar, with a substantially smaller firm, the length of its purse assures it of victory. In encounters with small enterprises, it can buy scarce materials and attractive sites, inventions and facilities; preempt the services of the most expensive technicians and executives; and acquire reserves of materials for the future. It can absorb losses that would consume the entire capital of a smaller rival.

Does the spending power of big business assure it of competitive advantages over smaller business rivals?

Mr. EDWARDS. I would have to hesitate over that word "assure." I should say that there is a distinct tendency for the small concern to be at a relative disadvantage where there are problems of preempting scarce resources, either human or physical.

You don't expect and you don't find that the small companies in the steel industry have as assured a future of or supply of high quality as the largest companies, and those of the small companies that have managed to do fairly well in that respect have managed it only by organizing joint ventures.

Mr. BURNS. As a general rule, is the spending power factor in your opinion, of greater or lesser importance than so-called efficiency of large-scale operation as a source of competitive advantage?

Mr. EDWARDS. I haven't any reliable information with which to determine the importance of the efficiency of large-scale operations, and for that reason I can't compare it quantitatively with these other factors.

Mr. BURNS. What are the economic arguments which are most frequently advanced in support of claims concerning the superior efficiency of larger business enterprises as compared with smaller units?

Mr. EDWARDS. Well, there is a great deal of self-serving declaration from large business enterprises to the effect that the big company is obviously efficient. It usually doesn't go into much detail.

In my opinion, if big companies can make a convincing demonstration of that point, they are neglecting their own interests in not supplying adequate details to prove the point.

There are conceptual difficulties and statistical difficulties for any outsider who tries to measure this sort of thing. In the first place, it is almost impossible for the outsider to distinguish efficiency from gains that are traceable to bargaining power. You can get rid of a cost either by reducing it or by transferring it to someone else. I have in mind an illustration from NRA days.

The upholstery industry asked for a relaxation of its code designed to permit it to operate more irregularly. When this proposal became a matter of controversy, the industry's support for its proposal consisted essentially of the statement that the automobile industry bought automobile upholstery irregularly and changed its purchases on such short notice that upholstery had to be produced in this irregular pattern.

I know nothing about the facts of the case other than what we were presented in NRA, but the *prima facie* showing was that the efficiency of the automobile industry was being maintained by thrusting inefficiency upon the upholstery industry.

To identify that sort of pattern and distinguish it from other patterns of efficiency would be difficult for an insider, and is practically impossible for an outsider.

Senator O'MAHONEY. Mr. Edwards, I have had some interest in the farm problem, and in recent weeks I have been trying to determine for myself what the effect is upon the prices of farm economies of large organizations of processors and distributors.

I received a very interesting letter from a man in the turkey industry in the West, not in my State, who told me that one of the big processors of turkeys followed the policy of asking for bids for turkeys and then rejecting all bids, then a week or two later, again calling for bids and again rejecting all bids.

Three times in the past few weeks he said this had taken place, with the inevitable result that the price to the producer was inevitably reduced. Is that the sort of operation pricewise that you have in mind with respect to the results of the use of large purchasing power?

Mr. EDWARDS. I should say if the company was doing a large part of the total buying of the market, that might be a possible pattern. It would require that it be doing a very large part.

Senator O'MAHONEY. Well, in this particular instance, it was doing a very large part of the buying in the market.

Mr. EDWARDS. The company apparently had what economists call monopoly power, that is, power for the buyer equivalent to monopoly on the seller.

Mr. BURNS. In evaluating claims for the superior efficiency of large companies, is it appropriate to distinguish between the big single plant that produces large quantities of goods under one roof, and the large corporation that operates several separate plants?

Mr. EDWARDS. I think so. A business enterprise is typically free to build plants of any size that it wishes to build and, mistakes aside, it presumably will build a big plant only when the technology of a big plant is more efficient for its purposes than that of a smaller plant.

The size of a firm, however, is not always determined by a competition keen enough to cut down companies that are too big, and hence the presumption that you make that plants of large size must be more efficient than smaller ones, if they exist, would not apply with equal force to firms of large size.

Mr. BURNS. Now using the automobile industry for purposes of illustration, could you describe how this evaluation would be applicable?

Mr. EDWARDS. I must repeat that I have made no special study of automobiles. There is a possibility of economy, but a possibility of waste in a large company organization, and both these economies and wastes have relatively little to do with technology. They fall into a managerial category instead.

The big company can functionally specialize its management, it can develop specialized service departments and can get a cross-fertilization of ideas among specialized people making large sums of expenditures on equipment, research, advertising, and various other things. Those may all be elements of efficiency.

The big company has a bigger gap between top management and operations than most small ones. This necessitates costly information services and chain of command that bridge the gap. It requires

policy decisions that may be bad because there is not a good enough flow of information, or there may be undue rigidifying within the concern.

A chain of command may produce redtape and buckpassing and intrigue and what not. Those are all elements of inefficiency. Almost certainly the importance of these elements differs greatly from one company to another. But you notice that none of those that I have mentioned had anything to do with plant technology.

Mr. BURNS. From your experience and studies, can you tell us what are the economic advantages of central business management in our large corporations operating many plants?

Mr. EDWARDS. Well, I tried in the first part of my previous answer to list some things that might be advantages.

Mr. BURNS. Could you state what you find to be the disadvantages beyond those that you stated? In that answer, of course, I was asking about the automobile industry, which you said you were not experienced enough with to comment on. But I want to make sure that you are answering from a full scope of your studies as to the economic advantages of central business management as well as the disadvantages.

Mr. EDWARDS. I think my previous answer is as good as I can do on a short one. I might add one point: that the answer had to do with elements of efficiency and inefficiency which are of concern, of course, both to the company and to the economy.

But on beyond these questions of efficiency, there is a question of the exercise of power which must be answered also before you have got the story of big business in proper focus.

Mr. BURNS. I believe you are familiar with the book by Peter Drucker, entitled "Concept of the Corporation"?

Mr. EDWARDS. Yes.

Mr. BURNS. Do you know whether that book was based largely upon the management organization policies of the General Motors Corp.?

Mr. EDWARDS. If I recall correctly, Mr. Drucker says that it was.

Mr. BURNS. Now in your own book, *Maintaining Competition*, you quote a letter from Mr. Drucker to you as follows:

My point was that what big business possesses is not a physical superiority but a managerial superiority. The physical job of production could in many cases be done fully as well in a small unit. The managerial, intellectual, and theoretical job of planning for this production of interpreting and coordinating it could not, I maintain, have been done without the leadership and experience of big business management.

Now, will you comment on this statement as to the managerial superiority of big business?

Mr. EDWARDS. Well, the large companies can pay their managers well, both directly and indirectly, through bonuses, and I would imagine on the whole they are able to get the most able managers.

Whether the ability of those managers goes up faster or less fast than the complexity of the task that they face in managing very large companies, I am not in a position to say.

I should think, however, that one recurring experience of large companies may throw some light on the matter. There is apparently an increasing emphasis upon decentralization within the management of our largest companies, that is, they apparently feel that the large

organizations can be held together with reasonable efficiency only if there is very substantial delegation of authority.

This raises a question as to just what are the remaining central functions which it is so important to have done centrally rather than in smaller organizations. That there may be some, I am willing to admit, but I don't think it is a clear and overwhelming case for one type of organization.

Mr. BURNS. Now, again quoting from your book, *Maintaining Competition*, at page 119, you stated :

In the light of this analysis, much can be done to reduce the size of the larger American business units without the danger that public advantages derived from bigness will be thereby destroyed. * * * Even if every plausible claim to preserve bigness on grounds of efficiency should be granted, the concentration of economic power could be decidedly less than it is now. It is probable that without impairment of efficiency we could end many of our industrial monopolies and greatly reduce the power of our conglomerate business giants.

Can you suggest an approach by which the objectives implicit in these statements could be achieved ?

Mr. EDWARDS. This is to ask me for general outlines of the approach I would like to American policy toward big business.

Mr. BURNS. Yes.

Mr. EDWARDS. As I see it, there are two problems that should be kept separate. One is the problem of the particular large company which has and abuses excessive power. There the specific examination under the antitrust laws and specific correctives such as are possible under the laws seem to me the proper procedure.

I think it quite hopeless to find such uniformity of pattern in those companies that one could apply an overall automatic rule, such as a ceiling on size.

The second problem has to do with keeping free of Zaibatsu-like tendencies for the economy as a whole. There, as I said before, I think the best measure is probably the measure of overall concentration, such as the place of the largest companies. I would like to see us keep very close watch on that trend, and I should like to see governmental policy aimed at accomplishing the result that the big business enterprises, as a group, grew somewhat less rapidly than the economy, rather than somewhat more rapidly. At present they seem to be growing slightly more rapidly.

Now, this is a tough line of policy, this second one, because in doing it, one should not disturb the incentive for particular enterprises, big and small, to try to grow. That is on the whole a healthy incentive, and opportunities for growth must be there if the incentive is to be preserved.

Hence, we should turn to an effort to block the types of growth which are least likely to be useful to the economy. Greatly increased emphasis upon the recently passed antimerger law seems to me one of the most obvious moves along this line, and I am myself disappointed and distressed by the slowness that appears to be inherent in action under the standards of the law as now written.

A second thing which seems to me to be very much worth exploring is the provision of incentives for large companies to slough off voluntarily portions of their size. It is incredible to me that no big company ever makes a mistake regarding a particular venture as properly a part of a big organization.

I think there are probably lots of things which start well under the big company, but sooner or later can stand alone. Until recently we had a tax system that penalized a large company that tried to slough off a part of its structure. We no longer do that.

We don't yet have a system which creates any encouragement for such sloughing off, and I think it would be highly desirable to explore the possibilities of that sort of policy.

Mr. BURNS. Have there been some indications of situations where a business might very well have separated certain segments from the main part of the corporation, but it would be so expensive taxwise that it was discouraged from taking such action?

Mr. EDWARDS. Well, it seems to me obvious on the face of the tax laws as they stood until recently that that must have been the reason.

Mr. BURNS. So that any effort to solve the problem of dividing up large corporations into more economic units or units which would better serve the whole nature of the economy will have also to involve a consideration of the tax consequences and a program which takes into consideration various statutes and not simply the antitrust laws?

Mr. EDWARDS. We should at least try to see to it that our objectives in the antitrust field are not thwarted by our policies in other fields.

Mr. BURNS. We have to achieve uniformity along several lines of legislation, not simply within the one field.

Mr. EDWARDS. That is right.

Mr. BURNS. Now, are the antitrust laws as presently on the statute books adequate to cope with the problems posed by the nature and extent of business size and concentration?

Mr. EDWARDS. You are asking there for an overall evaluation of the law. I should say that the basic principles of the basic statutes are sound. I would hate to see them changed.

I have already said that I think the merger law as it now operates is disappointing. Perhaps it could be made to accomplish the function which was envisaged for it if the Congress were willing to increase the resources underlying the enforcement of it on the general order of 5 or 6 times the present amount.

That is not very large. I understand that in midsummer the Federal Trade Commission was using the equivalent of the full time of about 18 employees on this statute. But short of some such change of scale as that, it seems to me one needs to rethink the merger law into fine categories of mergers which can be dealt with by a process less extended and elaborate than that which is now provided under the statute.

Senator O'MAHONEY. What do you mean "less extended and elaborate"?

Mr. EDWARDS. Well, Senator, the present principle is that a merger is unlawful if it has a reasonable probability of substantially reducing competition. Now this reasonable probability must be inferred merely from a change in business structure.

Senator O'MAHONEY. Well, that reduces it to guesswork, does it not?

Mr. EDWARDS. It reduces it in practice to an extremely elaborate background economic study which takes a long time. Meanwhile the merger has been consummated and the eggs have gone far toward being unscramblable.

Senator O'MAHONEY. Well, isn't it just the type of law which is so vague that it is really incapable of being enforced properly?

Mr. EDWARDS. I think that vagueness is needed for certain categories of merger problems in which you really don't know where—

Senator O'MAHONEY. Why should vagueness be needed in any circumstance?

Mr. EDWARDS. I accepted the word "vague" from you. I mean by "vagueness," if you will let me translate it into my language—

Senator O'MAHONEY. But you said it was needed. I did not say it was needed. I believe that laws should be anything but vague. It should be direct, simple, and capable of understanding by all persons to whom it applies.

Mr. EDWARDS. What I am saying is needed, Senator, is to make the illegality of a merger depend upon a forecast of economic effect.

I think that is necessary for types of mergers in which the effect is quite problematical and in which you must not step in with a general prohibition, and yet can't in advance, specify more exactly just what you want to prohibit. But when one comes to mergers—

Senator O'MAHONEY. Well, that comes down, does it not, to a declaration that the law must depend, in an area which is full of possibilities and probabilities, upon the varying judgments of the economists who give it attention?

Mr. EDWARDS. I am afraid the economists will be very thoroughly reviewed and fettered by the lawyers and the judges.

Senator O'MAHONEY. Well, you can get a lawyer on every side of every question. That is what makes the profession. Every client who goes into court is entitled to have a lawyer to put forth his case as successfully as possible.

Now what you seem to be saying is that every business which is involved in the question of unlawful merger had better get an economist to defend him as well as a lawyer.

Mr. EDWARDS. They do, Senator.

Senator O'MAHONEY. And he won't have any trouble in finding economists to take the contrary positions; will he?

Mr. EDWARDS. Experience thus far suggests that they do get not only one but several.

Senator O'MAHONEY. I am prompted at this time to call attention to the fact that when the Constitution of the United States was drafted, there were scarcely more than three big corporations in this country, if I remember my history correctly; most corporations were banks at that time, and whenever any group of individuals sought to establish a corporation at that time, they were required to lay their case before the State legislature and get a bill passed giving them a charter.

Now, the old charter laws stated specifically in most cases that no corporation should engage in more than one business. In our time when business, as a result of the development of technology and communication, is necessarily spread all over the Nation and then across the seas and now through the air over the whole world, it resulted in a change of State laws, no Federal law having been passed, and these groups of individuals who wanted to establish corporations got blank charters from several States to do anything they pleased.

That resulted in the development of what you have called today the conglomerate corporation. There are mergers now in which corpora-

tions come together, although the businesses in which each is active is thoroughly unrelated one to the other. There are numerous instances of that kind.

Would there be anything wrong in setting a limit upon the number of different businesses in which any particular corporation should engage?

MR. EDWARDS. I would be afraid of that, Senator. May I illustrate my point?

Senator O'MAHONEY. Oh, yes; of course, I would like to have you do it. You said a little while ago that you thought it would be unwise to put a ceiling on size.

I am inclined to share that point of view because nobody can predict the growth of this country, the growth of the economic system, nor the size that may be necessary to serve the best interests of the people.

The only thing that we all ought to agree upon is that the corporate structure should be designed to serve the public interest and not primarily the interests of those who create the corporation.

Therefore, as it seems to me, if we are unwilling to put a ceiling on size, we might perhaps consider the possibility of determining the number of diverse industries in which a particular corporation should be permitted to engage.

MR. EDWARDS. There seems to me to be two dangers in that line of attack. One lies in the fluidity of technology.

It is no longer clear, as it once was, where industrial boundaries ought to fall, and I think they would quite readily come through technological change not to fit any pattern of industrial classification which might be used in administering such a statute.

There is a second and, I believe, more fundamental objection. Sometimes, as I see it, the danger in a large company lies in its conglomerate spread across a number of industries which put the smaller and more specialized businesses at its mercy in any one industry.

But there is an alternative pattern, the case in which within a single industry there are technical obstacles to getting as many companies in competition as you want, and in which one of the competitive forces is the threat that that industry will be invaded and perhaps the fact of its invasion from another industry by other concerns.

Now under the antitrust law principle, you may attack the use of the conglomerate's power in the case where that is the important thing, while leaving the opportunity for one industry to invade another, and thereby intensify competition there open. If you did not leave it open, I think you would lose badly in particular cases.

May I say one more thing. My previous statement that you needed a test of economic effect in certain cases was intended to be no more than the statement that the principle of the Clayton Act is a proper principle for certain classes of problems, that principle being to rest upon the probability of future effect.

Senator O'MAHONEY. I am frank to say I don't follow you in your response to my question. I probably didn't make myself clear.

A corporation grows by success, by efficiency, acquires great fiscal power. It is able to purchase an industry or a company which may be small but engaged in an utterly different business from that in which the original company is engaged. And then by the use of its financial power and its purchasing power, it can build that new enter-

prise in size so as to push out of the field small companies that have not been brought under the tent of the giant.

Now, when you find that these two are utterly different industries, there is nothing related one to the other, why should we stand by and permit the merger of such companies or make the merger depend upon the judgment of experts in a Government bureau who are merely and necessarily indulging in a sincere attempt to prophesy what the economic future is going to be?

Mr. EDWARDS. My principle would be almost the exact opposite of that, Senator.

It would be that where the company was acquiring competitors or companies otherwise very closely related to its existing operations, we would have the greatest likelihood that the acquisition would reduce competition.

Senator O'MAHONEY. Oh, yes, of course; that is perfectly apparent.

Mr. EDWARDS. So that it would be in that field rather than in the case of the unrelated merger that I would want to make my law tightest.

Senator O'MAHONEY. Well, if you are dealing with a corporation which has the possibilities of continued growth, even without abuse of the antitrust laws, and can go into any number of different businesses and bring them under one management, remembering at the same time that in this era the owners of the corporation are not the managers of the corporation, management and ownership has been separated in our time, would it not then be the necessary result that the power to regulate commerce, which the Constitution gave to Congress, would rest in the hands of management, with no limit?

Mr. EDWARDS. I don't disagree with you at all.

Senator O'MAHONEY. That is a good place to stop, then.

Mr. EDWARDS. It misrepresents my position if I stop there.

Senator O'MAHONEY. Proceed.

Mr. EDWARDS. I don't disagree with you at all in your assumption that there can be a type of case worth stopping, along those lines.

I would feel very uneasy about converting that into an across-the-board rule that unrelated mergers could never take place. And, indeed, I don't think you would get away from the judgment of your well-meaning bureaucrats.

Senator O'MAHONEY. I didn't say unrelated mergers should never take place; I didn't say that.

I can understand, for example, how important it might be to a local community with a seasonal industry operating there, which, because it is a seasonal industry, closes down for several months of the year, how important it would be for the owners of that plant and the operators of that particular industry to develop some other utterly unrelated industry which might be capable of using the plant during the season of shutdown. That, I think, would be in the public interest. That is not the sort of merger that I am talking about.

My basic question was whether or not we shouldn't consider the advisability of placing some limit upon the number of conglomerate industries that could be brought under one management.

Mr. EDWARDS. I wouldn't know how to determine any such limit.

Senator O'MAHONEY. Well, it is evident that you haven't as yet had the opportunity to go into that subject, Dr. Edwards, so I will

let you give it some thought, and invite you to write the committee a letter about it.

Mr. EDWARDS. All right.

Senator O'MAHONEY. Mr. Burns, you may proceed.

Mr. BURNS. Now, if a business has grown to a large size, and if that size has been achieved without resort to unfair or predatory practices, under what circumstances, if any, should the Government have the right to step in and regulate or control that size?

Mr. EDWARDS. The appropriate test, as I see it, is the test of power. When a concern has such power that the opportunities and freedom of action of those who deal with it are objectionably curtailed, the Government should have the procedure for intervening. Historically, we have recognized that kind of power in the monopoly situation. I have suggested here today that it is also possible along the Zaibatsu line, and whichever way it appears the Government should have the right to furnish a directive.

Mr. BURNS. In connection with limitation of mergers in order to avoid increasing concentration, should not Congress state standards or guides which should govern the action of the executive agencies in passing upon the desirability of mergers?

Mr. EDWARDS. The Congress has stated a guide now where the effect may be to substantially lessen competition and tend to create a monopoly in a line of commerce, in any section of the country. That standard seems to me to result in an overelaborate development of cases that ought to be handled more summarily where the acquiring company is big and where there is a competitive relationship of some sort involved in the merger.

Your question invites an answer along the Senator's lines: Can there not be other standards stated for other classes of mergers? I would not know how to formulate them today. Rather, I would like to see the burden of proof shifted on particular classes of mergers.

Where the presumption is very strong that a merger will have an adverse effect on competition, we might make it a rebuttable presumption in the law for certain classes of mergers, thereby enabling the enforcement agencies to move somewhat faster.

Mr. BURNS. If that policy were adopted, wouldn't it be advisable to provide machinery for advance approval or disapproval of these mergers, rather than wait until after they had been achieved and attempt to reach them through proceedings after the fact?

Mr. EDWARDS. As you know, Mr. Burns, the proposals for amending the merger law for a number of years included such a plan of advance notice in bills before the Congress. That proposal was eventually deleted because there seemed to be no chance of passing the bill containing it.

My suggestion a moment ago was an intermediate, not that there should be advance approval of all mergers, but that the Commission should be empowered to disapprove certain particularly dangerous classes of mergers by a rather summary process, unless the companies involved took the burden of showing that the apparent danger did not really exist.

Mr. BURNS. But, in those cases, would that be what we might refer to as advance examination, advance approval, or disapproval?

Mr. EDWARDS. This would have some of the effect that was hoped

for from advance approval. It would not, however, require in itself that merging companies file notices with the Commission.

In practice, the Commission can find out that mergers are going to take place when they are large and significant usually before they take place.

Senator O'MAHONEY. Isn't that what we now have, in effect, under the antitrust laws?

Mr. EDWARDS. What?

Senator O'MAHONEY. Advance approval or disapproval of proposed mergers.

I recited this morning the automobile cases of mergers which were approved, and you referred to it in your testimony. Those were approved because it was believed by Judge Barnes that they would promote competition.

I didn't refer to the fact that in his testimony here Judge Barnes also told of his refusal to approve a merger that Bethlehem Steel and Youngstown Steel wanted to effect. Their argument—and they made the argument at this table—was that if Bethlehem and Youngstown were permitted to merge they would provide more effective competition.

But the Antitrust Division declined to approve that merger. Bethlehem and Youngstown were, therefore, faced with the choice of proceeding with the merger and running the risk of being proceeded against in an antitrust suit or just giving up the merger, and, meanwhile, of course, United States Steel went on at the head of the steel companies.

Mr. EDWARDS. There are two differences between the advance consideration to which you refer and the advance-approval proposal which I understood Mr. Burns to be referring to.

The first is that at present such matters as the Bethlehem-Youngstown merger come up for consideration before the fact if the companies concerned want that consideration. Under the advance-approval proposal that used to be in the bill, companies would have been required to obtain approval before they merged.

The second difference—

Senator O'MAHONEY. May I interrupt you there with respect to that difference?

If I am not mistaken, the reason why that proposal was eliminated from the bill was because Congress did not want to give the power to any bureau to grant such approval because of the lack of a standard to determine the judgment.

Now, that is one of the things which I think this committee must try to search out—the possibility of drawing a standard of merger which could be settled by litigation in the courts instead of being settled by commissions to whom Congress had delegated its legislative power.

If we are working on the legislative power of Congress to settle this economic problem of monopoly and size and opportunity for growth by the individual, I cannot avoid the conclusion that we must make some definite attempt to get a definition that will be capable of being comprehended by all who are affected, and comprehended in the courts.

I interrupted you as you were about to state the second difference.

Mr. EDWARDS. The second difference is that under the present procedure, as you indicated, Senator, a company which doesn't wish to rest upon this informal advance opinion proceeds, with no necessary

illegality, if the advance opinion should turn out to be contrary to that of the courts, whereas the proposal for advance approval in the bill, as I understood it, would have made it unlawful to merge without that approval, so that the decision would be useless.

Senator O'MAHONEY. That's right; I agree with you.

Mr. BURNS. You indicated that you saw some desirability, in certain types of mergers involving the larger corporations, in placing the burden upon them of establishing the justification.

Now, aside from the merger but just dealing with the proper approach to the continuation of their present size, do you think that the burden of proof might be placed upon the large enterprise to justify its existence in any procedure which might be set up to cope with the problem?

Mr. EDWARDS. To me, that question turns on the question of the trend of concentration. In 1932 Burley and Means made the first analysis of this trend, and came to the conclusion that we were in a galloping concentration which, had it continued, would have put 70 percent of industrial activity in the hands of 200 companies by 1950. Obviously, their forecast was wrong.

But had that forecast been correct, short of a willingness to see concentration reach such heights as would be inconsistent with our competitive policy, we would have had to take drastic action quickly, without too much care as to its detailed appropriateness.

If the trend of concentration is what the Federal Trade Commission's recent study suggests, an increase in the general order of about 10 points in half a century, we have the time to be more discriminate, and hence I should like to see our present line of policy rest upon divestiture and dissolution of big companies for cause, where there is cause, rather than upon any wholesale slashing.

But it is precisely because the concentration problem is keyed to the severity of a policy and to the amount of leeway one has that I would like to see concentration figures much more reliable and much more continuously collected than they are now.

Mr. BURNS. Are you familiar with the recommendation of Prof. Louis Schwartz in his dissent from the report of the Attorney General's committee, in which he proposed that a Government agency be established with the power to prevent integration not justified by production or distribution economies and to compel the reorganization of excessively large enterprises accordingly? Would you comment on his proposal?

Mr. EDWARDS. I would be troubled by two things in it. First, I don't think we know enough yet, objectively enough, about production and distribution economies, to make that a reliable standard for a Government bureau's administration of such a law.

Second, that seems to me a delegation of power, which must be called, like NRA, delegation run riot. This is, in effect, to say that a Government bureau shall have the authority to reorganize the economy into an efficient one, as it sees fit. I can think of no broader delegation than that, and it would scare me right out of my boots.

Mr. BURNS. Have you any suggestions for a positive approach to the problems of business size and concentration, such as measures for strengthening smaller enterprises or facilitating the entry of new enterprises to industries where such entry now seems effectively foreclosed?

Mr. EDWARDS. I have already mentioned two points: promoting voluntary divestiture, and strengthening the merger laws.

I might add one more aspect of the latter. I think that the problem under the merger law is going to be increasingly one that was not clearly envisaged in passing it, that of the joint subsidiary organized by two or more companies pooling their technology from different fields to do a job that seems to call for that technology.

The petrochemical industry is a good illustration. Here there are obvious advantages in such pooling and obvious dangers that it may substantially increase concentration in the new field. The problem needs to be thought through as such, and not handled as a kind of a corollary of other types of merger problems.

I am also somewhat concerned about the possibilities of the growth of pension funds among large companies which as these funds grow, seem to me to invite intercorporate investment of the investment trust type on what might turn out to be a very large scale.

I doubt if the present merger law is an appropriate instrument to face the problems that arise in that field.

For the most part, my interest in modifying the antitrust laws consists in early study of new problems like this, in order that, by the time they are important to us, we shall know what line of policy to follow on them.

Mr. BURNS. In answer to one of our questions with respect to the adequacy of the antitrust laws, you stated that you felt that the basic principles involved were proper. Will you state what your conception is of the basic principles of the antitrust laws.

Mr. EDWARDS. One is that there should not be agreements, combinations to restrain trade.

The second is that the concentration of power in the hands of a single organization should be curbed when that power becomes great enough to interfere with the freedom of action and a reasonable opportunity to bargain on the part of those with whom the concern deals.

That latter is my paraphrase of the monopoly principle, in order to extend it to the Zaibatsu situation, as well.

Senator O'MAHONEY. Mr. Burns tells me that the staff questions have been concluded, and I have interrupted them so frequently during your presentation that I don't wish to take any time now, since you are under obligation, as I understand it, to take a plane to go to Chicago where you have a class in business sometime this evening.

Mr. EDWARDS. That's right.

Senator O'MAHONEY. We thank you very much for your appearance here, and I am very grateful for the presentation that you have made. It may be that later on when we can get this discussion extended to take in executives of business, as well as members of the committee and the staff, we would like to have you back again.

Mr. EDWARDS. I shall try to hold myself at the committee's disposal.

Senator O'MAHONEY. Thank you very much.

Then let me say that the committee will stand in recess until a quarter of 2. We hope to finish with Dr. Moore and Mr. Quinn this afternoon.

(Whereupon, at 12:15 p. m., the subcommittee recessed, to reconvene at 1:45 p. m. of the same day.)

AFTERNOON SESSION

Senator O'MAHONEY. The committee will come to order.

Mr. Burns, are you ready to proceed?

Mr. BURNS. Yes, Senator.

Senator O'MAHONEY. Who is your first witness?

Mr. BURNS. Prof. Donald A. Moore, of Michigan State University; and Assistant Counsel McHugh will interrogate.

Senator O'MAHONEY. We are glad to have you here, Professor Moore.

Mr. MOORE. Thank you, sir.

Senator O'MAHONEY. Mr. McHugh, you may proceed.

**STATEMENT OF DONALD A. MOORE, DEPARTMENT OF ECONOMICS,
MICHIGAN STATE UNIVERSITY**

Mr. McHUGH. Do you want to begin reading your prepared statement, Professor Moore?

Mr. MOORE. Yes; it is somewhat overlong and may be dull; should I read all of it?

Mr. McHUGH. Why don't you begin it, and we will interrupt with questions from time to time.

Mr. MOORE. All right.

Mr. McHUGH. Will you state for the record, Professor, who you are and your background.

Mr. MOORE. My name is Donald A. Moore. I am a member of the department of economics of Michigan State University, whose football team we all know is going to the Rose Bowl this year.

Senator O'MAHONEY. I beg your pardon?

Mr. MOORE. Hadn't you heard, sir? [Laughter.]

Senator O'MAHONEY. I wish that team could get in the same bowl with Wyoming some time. [Laughter.]

Mr. MOORE. I am the author of a chapter on the automobile industry in Prof. Walter Adams' book, *The Structure of American Industry*, published by Macmillan in 1954.

Mr. McHUGH. Professor, in addition to this chapter in Professor Adams' book, have you ever made any other independent study of the automobile industry?

Mr. MOORE. I have, in collaboration with Professor Koo, a short article on the question of pricing and distribution through dealers, and no one has seen fit to publish this article yet; and Professor Koo and I also have another study that we are beginning on pricing.

Mr. McHUGH. In the course of your study, have you examined only second source material or have you studied original source information?

Mr. MOORE. The one we have completed is purely theoretical. The one we are starting is going to original sources in the form of questionnaires and interviews with dealers.

My statement will be confined to some observations on the structure of the automobile industry. By "structure" of the automobile industry, generally, I mean the sizes, number, and firms in relation to each other and to other business units with whom they deal.

The present structure of the industry is the result of a complex mixture of technology, business organization, and public acceptance

of the product. The analysis of the industry is divided into four steps. First, its present composition will be described briefly. Second, seven requirements for the survival of a firm as a designer and assembler of automobiles will be suggested. Third, the history of the industry will be outlined, with special emphasis on the growth of firms whose organizations and products meet these seven requirements for survival. Last, some implications of the present structure of the industry will be explored.

The automobile-assembly industry may be described as an oligopoly, characterized by competition between 6 firms; a Big Three and 3 independents. However, this is neither a static picture nor a very complete description of the job, of the business, of producing automobiles.

The industry has never been static in structure for many months at a time. Firms have changed in relative sizes, their organizations and their product lines have always undergone rapid changes, and the number of firms has changed frequently.

Early in 1953, there were 6 independent producers. In 1953, the Kaiser Motor Co. purchased the Willys-Overland facilities, and the American Motors Corp. was formed by merger. In 1954, the Packard Motor Car Co. and the Studebaker Corp. were merged. The Kaiser Motor Co. sold negligible quantities in 1955; there is some reason to doubt whether it will continue as a domestic producer of passenger cars. Approvals of the 1953 and 1954 mergers by the Department of Justice and the Federal Trade Commission were based on the proposition that the mergers would help to maintain competition in the industry by strengthening the remaining small firms.

The product lines have been changed considerably since 1953. Ford and Chrysler have each added a luxury model. Ford is considering a fifth model to fit between the Mercury and the Lincoln. The merged independents have consolidated their offerings, and some of the small-sized models have been dropped. The sport cars produced by Ford, General Motors, and American Motors may develop a significant new market, besides serving as trials for new body styling and other features. The line-expansion activities of the Big Three may increase the difficulties of the remaining independents, who have in the past relied upon the distinctiveness of their models when compared to the mass-produced cars.

Extensive reorganization has been going on within all of the firms except General Motors. One of the principal objectives seems to be a decentralized, staff-and-line type of organization. Greater vertical integration seems to be an objective of several firms. Diversification into nonautomotive products is characteristic of most firms and is being pushed vigorously by some of them.

As Ford and Chrysler vie for second place in the industry, and as the Chevrolet division and the Ford division battle for first in sales, the total sales of the Big Three rise—sometimes at the expense of the independents. Furthermore, if automation is widely adopted, and if the impact of an annual wage supplement were to be felt in declining markets, the advantages of large size might become more pronounced. In short, it is a brave man who will predict the structure of the automobile-assembly industry for more than a year or two ahead.

One might interject at this time, yesterday the Wall Street Journal contained a statement by Henry Ford II or his representative that

within 10 years they expect to be the largest firm in the industry, to indicate how some people feel about the changing character of the industry.

I might say that I would hope that it is that dynamic, and that that would occur, not that I have anything against the firm that is now the largest, but I would like to see the possibilities of changes in—

Senator O'MAHONEY. Did that statement have anything to do with the announcement that Ford Motor stock is going on sale to the public?

Mr. MOORE. That, in my judgment, it certainly has.

This is still only a view of the surface of the industry. Like an iceberg, most of it is out of sight. The Bureau of the Census lists 1,904 firms engaged in the production of automobiles and parts. This does not include suppliers of glass, tires, upholstery, or paint. General Motors alone is said to purchase from 21,000 concerns, though it has the greatest degree of vertical integration of all of the producers.

There are more than 44,000 automobile dealers, 85,000 nondealer repair shops, 188,000 filling stations and between 9,000 and 10,000 automotive wholesalers with repair facilities. The relationships which exist between the auto manufacturers and these firms, particularly the parts manufacturers and the auto dealers, involve some of the most interesting intraindustry competitive patterns that one can find. These will be considered later.

The seven conditions for survival—

Senator O'MAHONEY. Before you leave this first chapter, I am impelled to ask you whether you think it would be appropriate to describe the situation which you have defined here, with General Motors said to be purchasing from 21,000 different concerns, with 44,000 automobile dealers, 85,000 nondealer repair shops, 188,000 filling stations, and between nine and ten thousand automotive wholesalers with repair facilities, it would be appropriate to say that we have something in business resembling what might be called economic colonialism with a lot of little outfits dependent upon the big, just as many nations in the past have been the colonies of vast empires?

Mr. MOORE. Senator, in the sense that there are a lot of very small firms who depend for many things upon large firms, I certainly agree with you. I do not know about the term "colonialism." I would have to think about the use of that term. The relationships between small firms—

Senator O'MAHONEY. Well, I use it in the sense of the dependency of many of these firms necessarily upon the big ones.

Mr. MOORE. In many cases they depend very, very closely upon the policies of the large firms.

This is not true in all of the cases, not true, perhaps, even in the majority of the cases.

But in the case of the firms, such as where the automobile dealer relies upon the franchise for his privilege of selling the automobile, the relationship is one of dependency upon many of the firms, the large firms' policies; that is correct.

Senator O'MAHONEY. Proceed.

Mr. McHUGH. Professor Moore, are there some parts suppliers who furnish all of their capacity exclusively to a single producer, or nearly all of their capacity?

Mr. MOORE. I do not know.

Certain conditions must be met by any firm which hopes to survive as an automotive manufacturer. Clearly, success does not require all firms to meet these conditions in equal degree. Some would argue for a shorter list, or for a longer list, or would argue that outstanding success in certain directions would exempt a firm from meeting other requirements. Yet no firm can—on penalty of failure—ignore the importance of these seven requirements.

Briefly stated, the survival conditions are (1) a diverse product line covering a considerable part of the price range; (2) the ability in most years to sell a sufficient quantity of autos and other products to realize the economies inherent in the mass-production process; (3) adequately financed, dependable, and geographically well-distributed dealer and service facilities; (4) financial resources adequate to bear the cost of inventories, research, model changes, and occasional bad years; (5) an optimum combination of vertical integration and outside supply sources; (6) the engineering and marketing knowledge necessary to innovate without departing from the market's notion of an acceptable automobile; and (7) the existence of a satisfactory used car market for the product.

(1) A DIVERSIFIED PRODUCT LINE

Ignoring for the present the importance of nonautomotive products and the sale of parts and accessories, one cannot but agree with William C. Durant, in the formation of General Motors, who said that the automobile offerings should be varied. Some models do not sell in some years. The fixed costs incurred in bringing out a model are so great that financial failure might result—as it has for many small firms. Several models not only provide “cushions,” but, by appealing to every purse, they maximize the general public interest in the firm's line. In fact, unless a firm can successfully invade the lowest-price bracket, where more than one-half of all cars are sold, it may not be able to achieve sufficient total volume to survive.

All three of the independents now offer cars in the low-price class, but they have not really successfully invaded this market. Also, there are many economies in research, design, financing, sales, and tooling that can be spread over all models. General Motors clearly illustrates this with its 3 basic bodies for 5 cars, its “motoramas,” et cetera. A principal objective of the mergers of the independents was the rationalization of model design, production, and promotion.

(2) VOLUME ADEQUATE TO REALIZE THE ECONOMIES OF MASS PRODUCTION

The industry was built on the low-price, large volume principle. Though the emphasis on the low price has been replaced by an emphasis on product improvement, the large volume is even more important today. It has been estimated that the industry spent \$1 billion in development and “tooling” for the 1955 models. Such radical model changes generally occur only once every 3 years, but annual face-lifting and promotional expenses must be incurred. Such costs are not proportional to the volume of production, but are nearly fixed. The small firm must be as active in innovation as the large one, in order to sell its models; hence a lower limit to size may be set by this factor alone.

The production process itself requires a continuous large volume in order to achieve low cost. Possible automation of many of the processes may require even larger volumes—the effect of this development on the structure of the industry cannot yet be predicted.

(3) ADEQUATELY FINANCED, DEPENDABLE, AND GEOGRAPHICALLY WELL DISTRIBUTED DEALER AND SERVICE FACILITIES

The customer does not deal with the manufacturing oligopoly, but with the dealers, who form a series of imperfectly competitive markets serving every town and village in the country.

While there seems to be enough candidates for dealer franchises, the task of assembling and maintaining a system of dependable sales and servicing outlets for every community is not an easy one. Small producers find that if their dealers are not able to depend upon sales for large parts of their income, they become primarily repair shops, used auto dealers, or farm implement dealers, to the disadvantage of the promotion and servicing of new autos. A new producer finds this a significant barrier. Also, dealers with small volumes have great difficulty meeting the price competition of large-volume dealers.

The producers early in the history of the industry discovered the importance of the dealers. In fact, many new firms secured significant portions of their financing from the cash deposits of their dealers. As the industry became more complex, the producer-dealer relationship became even more important, though the financing of new car inventories has been taken over by others.

The franchise which now ties the dealer to the manufacturer is a peculiarly one-sided document. This, Senator, I think is one of the instances to which you referred.

In return for the right to sell one make of car, the dealer agrees to handle only the one make (or some combination of one manufacturer's makes), to meet minimum financial requirements, to maintain specified showroom service and parts facilities, and to conform to standardized accounting procedures. The franchise may be canceled by the manufacturer for specified cause, or for "failure to represent the manufacturer."

In 1953 the Supreme Court affirmed the right of the manufacturer to cancel a franchise with or without good faith. As early as 1933, a Federal circuit court declared that it could not protect parties from contracts which they have made. Thus there seems to be no legal relief for the one-sided nature of the agreement—and dealers seem to be willing to enter such agreements. In fact, the manufacturers' claims that cancellation is necessary to protect the public against "sharp" dealer practices is probably not without merit (assuming continuance of the present dealer franchise system.)

The dealers also complain of various "forcing" practices of the manufacturers. The two complaints are related, for cancellation may in fact be based upon failure to accept required volumes of cars and/or "genuine" parts. Producers have been legally barred from forcing the use by dealers of specified finance companies.

However, there is nothing to stop the forcing of automobile "quotas" upon dealers. In practice there is consultation and considerable mutual agreement on sales quotas. Yet, when the selling

becomes difficult, one hears frequent complaints by dealers, and there is evidence that they are selling more than they would voluntarily choose to sell. The practice of "bootlegging" is one kind of evidence of this.

Senator O'MAHONEY. How do you describe bootlegging?

Mr. MOORE. Senator, that is the term that I always put in quotation marks. It is used to describe the practice of a new-car dealer selling a new car which he gets from the manufacturer which he represents, to another kind of automobile dealer, or a used-car dealer, who is not authorized to be an agent to sell this automobile representing the manufacturer.

Senator O'MAHONEY. It is a common practice, is it not?

Mr. MOORE. I believe it is quite common, Senator. I have observed many instances of it, and read of many instances of it.

Senator O'MAHONEY. Do you know how it originates?

Mr. MOORE. Does the Senator mean do I know why dealers do this?

Senator O'MAHONEY. Yes. What forces them to bootleg cars?

Mr. MOORE. Their anxiety to continue to sell volumes of cars that please the manufacturer whom they represent, in my judgment. They have cars that they cannot sell to regular customers at prices they expect to charge, so they find other customers who pay lower prices. Some of these customers may be people who want to resell.

Senator O'MAHONEY. Well, what is the function of the allowance for old cars in this business?

Mr. MOORE. The allowance for old cars performs the function of actually adjusting the price in the transaction.

Senator O'MAHONEY. I mean, is that increased by the bootlegging practice?

Mr. MOORE. I fail to understand the question, Senator.

Senator O'MAHONEY. Does bootlegging of cars involve increased allowances for old cars?

Mr. MOORE. No. As I understand the way the term has been used in the trade, it does not cover the practice of so-called overallowing for trade-in, which is a form of price reduction.

Senator O'MAHONEY. Well, some complaints have come to me, for example, that in some instances the manufacturers allow special prices and privileges to their officers and to their employees for the purchase of cars.

Does that have any part in bootlegging, if it exists?

Mr. MOORE. No, sir; it is not described as such by the industry. This is a practice which manufacturers use to simply give this privilege to their employees.

Senator O'MAHONEY. Have you had any information that dealers sometimes protest against it and say that it causes an invasion of their own field of selling?

Mr. MOORE. I recall reading such comments in the news some time ago.

Senator O'MAHONEY. It has not come within your own investigation?

Mr. MOORE. No.

Senator O'MAHONEY. Proceed.

Mr. McHUGH. In this connection, Mr. Moore, are you saying one of the principal causes of bootlegging is the forcing by the manufacturer of cars upon the dealer?

Mr. MOORE. Yes. I am saying that it is the primary cause.

The forcing of accessories, on which both the manufacturer and the dealer make higher margins than on autos, is another practice that does not lend itself to regulation. It is a matter of the use of salesmanship by factory representatives and by dealers. The dealer is satisfied with his margin when he can sell accessories, and accessories are relatively cheap sales devices when he can give them away to secure automobile sales.

The forcing of "genuine" parts is a more delicate matter, involving arrangements for exclusive dealing which may injure other manufacturers of parts. Prewar dealer franchises sometimes required the exclusive use of factory-handled or factory-authorized parts.

In July 1953, the Federal Trade Commission issued a cease-and-desist order against the exclusive dealing arrangements made by the A-C division of General Motors and Champion Spark Plug Co. with their outlets for spark plugs. The rule against exclusive dealing had been established in a 1939 order enjoining General Motors' A-C division from exclusive dealing in spark plugs and oil filters. Recent dealer franchises tend to be silent on the question of exclusive dealing.

Obviously all vehicle manufacturers stress the stocking of "genuine" parts—genuine parts are defined as those sold by the manufacturer of the automobile for which the part was intended. Since the automobile manufacturers are not fully vertically integrated, these parts may be manufactured by anyone actually.

Obviously all vehicle manufacturers stress the stocking of "genuine" parts, but it is believed that less and less reliance is placed on the franchise provision and more reliance is placed on the manufacturer's selling force to obtain dealer cooperation. The following provisions of one vehicle manufacturer-car dealer franchise are illustrative:

1. No specific dollar amount of inventory was mentioned in the franchise but the dealer agrees to stock "genuine" parts to whatever extent is necessary to service adequately his zone of influence. In executing this policy the dealer is expected to work with the manufacturer's representative and an agreement is to be reached as to what is an appropriate level of inventory.

2. The dealer also agreed to use genuine parts in his repair work. At the same time, there was no stipulation against purchasing parts from sources other than the vehicle manufacturer.

This is from Professor Davisson's book on *The Marketing of Automotive Parts*.

There is a long history of misunderstandings, but it is clear that the dealers as a group are of vital importance to a manufacturer, though any one dealer may be considered dispensable. In recent years, according to management sources, the dealers have gained more power, and often participate in the formulation of general dealer policy.

(4) ADEQUATE FINANCIAL RESOURCES

This is not a requirement peculiar to the automobile industry. However, the contrast between the shoestring operations of early producers and the enormous financial requirements of today's firms is striking. Assembly plants of efficient size are costly, and they are becoming more costly. With or without vertical integration, inventory requirements are great, in spite of the fact that dealers still pay cash to manufacturers for cars. Development and promotion costs have become

larger than for most other industries. Last, but not the least, is the occasional necessity of surviving bad years, caused by an unsuccessful model or by depressed business conditions.

The history of the Kaiser Motor Co. illustrates this great need for funds. The other Kaiser enterprises, a war-surplus plant, RFC funds, a \$53½ million stock issue, and bank loans all contributed to this undertaking. Yet lack of funds may have been a handicap, and few others could be expected to come so close to success. It may turn out that Chrysler Corp.'s entry in 1923 is the last successful one.

(5) A COMBINATION OF VERTICAL INTEGRATION AND RELIANCE ON OUTSIDE SUPPLIERS

The early producers designed a car, rented factory space, set up a production line, and placed orders for the components to be assembled. This is roughly descriptive of the Ford Motor Co.'s beginning in 1903, and also of the Kaiser Motor Co.'s start in 1946.

Yet all of the producers found that some vertical integration was essential. Various reasons might be given: (a) A new process or part can be developed, (b) the techniques of mass production can be applied to a part or a subassembly, (c) parts suppliers should be "disciplined" or given more vigorous price competition, (d) excess or complementary plant capacity can be utilized profitably, (e) retained earnings can be invested profitably in parts making, (f) greater diversity of product provides some security against fluctuations in automobile demand, and (g) no single source of supply should be relied upon.

These are all possible explanations of the reasons why vertical integration has taken place bit by bit on the part of these firms.

Whatever the reason or combination of reasons, each firm seems to find some vertical integration necessary. The resulting ability to apply its own research and production techniques to parts production, and thus to keep suppliers' costs and prices in line, may be sufficient reason.

Vertical integration is seldom complete for any one part or subassembly. It is certainly not carried far into the production of materials and supplies. The vertical integration of parts production may be described as "tapered." There are good reasons for this, in addition to the disciplinary reason and reluctance to rely upon one source. Since automobile sales vary considerably from year to year, and from season to season, occasional idle capacity cannot be avoided. Tapering shifts a large part of it to the outside suppliers.

By tapering I mean that a firm tends not to produce its total supply of any one part. They will produce some of that part or subassembly that goes into the car.

In addition it will buy a portion of its needs. The function that this performs in declining markets is that a larger percentage of the automobile manufacturer's capacity can remain in utilization. It is the outside supplier whose capacity becomes idle. As the total need for these subassemblies decline—

Mr. McHUGH. Do all the car manufacturers have some type of tapered production?

Mr. MOORE. I believe that is a good description. In the bodymaking that was once the case. That seems to be disappearing in body-

making, as the firms acquired enough bodymaking facilities to completely satisfy the needs.

But for most things this is bound to be true so long as markets are growing rapidly, the firm perhaps does not have the capacity at the time to produce all of its needs for a particular subassembly, so it buys them from the outside. But that may be continued deliberately as a firm policy. They will continue to do that.

For reasons other than meeting a bad market this way, for some of the other reasons I listed, they always provide a check against their own division as to its efficiency, by seeking what is the lowest price for which you can buy this on the market. You compare quality and price of your own division making parts, and the people from whom they are buying them.

Mr. McHUGH. What check then, Mr. Moore, would the manufacturer have if he is producing his own body exclusively, not obtaining any bodies outside?

Mr. MOORE. He would not have the same kind of a check, except by cost studies.

Mr. McHUGH. Then the only checks are accounting analyses?

Mr. MOORE. Accounting analyses would be the check; whereas the other is a practical market check in the sense that you actually compare market prices with your own costs.

Senator O'MAHONEY. Proceed.

Mr. MOORE. While one may conclude that no firm could survive without enjoying some of the advantages of partial integration, the extent to which it has been accomplished varies widely within the industry. Professor Davisson has constructed a convenient measure of relative degrees of vertical integration. He uses the ratio: amounts paid to suppliers over amounts paid to employees. While this is not a meaningful absolute measure (the ratios of value added to materials purchased very widely between different products in industry generally) it is a useful comparison between firms whose product structures are similar. Three annual comparisons of five firms are shown in table 1. The Ford Motor Co.'s degree of integration cannot be measured, but it is estimated to be below General Motors and above all other producers.

Senator O'MAHONEY. Why do you say the Ford Motor Co.'s degree of integration cannot be measured?

Mr. MOORE. Because of the lack of published financial figures to the same extent they are published for the publicly held corporations. This will be corrected within a few months as the stock is publicly held.

Senator O'MAHONEY. This table which appears to have been taken from Professor Davisson's book, *The Marketing of Automobile Parts*, would indicate that Packard Motor Car Co. had the largest 3-year average of integration; is that correct?

Mr. MOORE. Had the largest 3-year average of ratios. The large ratio here indicates a small degree of integration.

Senator O'MAHONEY. The large ratio indicates a small degree?

Mr. MOORE. A small degree of integration.

Senator O'MAHONEY. So that General Motors, having the smallest ratio, 1.87 under the column "3-year average," in fact had the largest amount of integration?

Mr. MOORE. The largest degree of integration.

Senator O'MAHONEY. Yes. Next to that was the Nash-Kelvinator Corp. at 2.68?

Mr. MOORE. Yes, sir.

Senator O'MAHONEY. After which comes Studebaker with 3.02; Chrysler with 3.65; and Packard with 3.71?

Mr. MOORE. Yes, sir.

Senator O'MAHONEY. Thank you, sir.

(6) FREQUENT MODEL CHANGES WITHOUT OFFENSE TO PUBLIC TASTES

Mr. MOORE. The most economical production is the continuous output of a fixed model. This has not been possible since 1925. Two types of compromise must be made between conservatism and radical style changes. First, major changes are undertaken only every 3 years or so. (The cycle of major style changes seems to be growing shorter.) Intervening years are marked by inexpensive decorative changes and expensive publicity about new models.

The second compromise is made between the market's insistence on change and its essential conservatism. Styling and design are delicate arts; the 1934 Chrysler and DeSoto Airflows failed, while the 1947 Studebaker succeeded. It is interesting that although the Chrysler products of the early 1950's were designed for rational consumer preference, they failed to appeal. A distinction must be drawn between engineering and styling. Fine engineering cannot be seen; it must be attractively packaged.

The small firms must be more skillful than the large firms, for several reasons. First, total design and tooling costs are not proportional to volume. Second, since small firms appeal to minority tastes, they must have special features. Third, being in the minority, their models are out of line if radically different.

By that I mean that the automobile or a combination of automobiles making up the majority of sales, no matter what it did to its design, would not be regarded as queer, because the majority is, after all, not queer or strange; whereas, a firm which sells 2 or 3 percent of the market might be regarded as a rather peculiar-looking automobile if it did not happen to appeal to public tastes, and the small firms, I think, are quite restricted in their necessity of having some special appeal for their cars, at the same time to be sure that the public does not turn them down on the grounds that the design is in poor taste.

Tooling and parts costs may be higher for small producers than for large producers. If forced to follow rather than lead, orders may have to be placed later—thus more overtime labor may be used by suppliers. Small orders are generally more expensive to supply than large orders, regardless of the time element.

(7) A SATISFACTORY USED-CAR MARKET

The concentrated structure of the industry may be due in large part to the behavior of the used-car market. One of the greatest dangers to a producer is a rapid decline in the resale values of its products. This was one of the Chrysler Corp.'s difficulties through 1954. Small producers generally suffer this disadvantage. New producers and those rumored to be on the way out are especially

troubled by it. The Kaiser Motor Co. did not overcome its newness in this respect before doubts concerning its life hastened the decline in its sales.

It appears to be rational for used-car buyers to fear the products of new or rapidly declining firms, for service facilities are important. It is not quite so clear why used-car buyers discount the products of the sounder small firms as much as they do. A part of the explanation is that their new models may be somewhat overpriced for their characteristics, and this is merely squeezed out on the first trade. Some deficiencies in servicing facilities may be encountered, but this is not serious for most of them. The theory that Big Three dealers deliberately depress the trade in values of independent makes is not sound. The self-interest of a dealer would prevent him from pushing this beyond a point justified by the realities of the market. Used-car dealers report that the independent makes go cheaply at auctions—the auction buyers cannot be imagined to be acting in concert to depress the prices of these makes. The answer must be that an independent make has smaller potential market, hence a slower turnover, either for a used-car dealer or for an owner. Thus success breeds success in the automobile industry, and a firm does not dare to become too small, lest it be criticized by the used-car market for simply being too small.

Briefly to outline the history of the industry, we may better understand the existing pattern of the industry, if we briefly review its history. This history may be conveniently divided into five stages, each of which has its peculiar significance for the growth of certain characteristics of the industry.

The first period I designate as purely experimental, very little commercial-type production, through 1898.

As early as 1865 one can identify a gasoline-powered vehicle built in Vienna by Siegfried Marcus. But he considered it of no practical importance. German, French, and American mechanic-inventors made important advances during the following 35 years, but the product remained an experimental one.

The American pioneers—the Duryea Bros., Ford, King, Olds, Winton, and others—were interested in the practical usefulness of their vehicles. There were many difficulties—the products needed a lot of improvement, the public was suspicious of them, and there were virtually no adequate roads. Vehicles were manufactured on very small scale; often on order. Prior to 1899, commercial production can hardly be said to have existed in the United States. Experiment and development prepared the way for commercial production at the turn of the century.

(2) 1899 through 1910.—Small firms producing for a limited market: 25,000 vehicles were produced in 1899; 187,000 were produced in 1910. Many small firms were able to enter this market, because of the small capital requirements and the growing demand. More than 1,000 firms are reported to have been formed to produce automobiles between 1895 and 1926. Most of these were paper firms, stock-promotion schemes, or serious but stillborn efforts. Ralph Epstein's figures—total of 181 firms in commercial production between 1903 and 1926—is probably accurate. Failure of a single model—and most of them were experimental—could easily ruin such a firm. The Olds Motor Works was one of the largest of the firms, selling 25

percent of the market in 1903. Yet when Durant secured it for General Motors in 1908 it was declining.

In spite of the freedom of entry and the small sizes of the firms, the competition should be described, in Chamberlinian terminology, as "monopolistic competition." The firm's products were always differentiated, and sold as special products designed for special tastes and special purses. Vigorous selling efforts were typical from the beginning of the industry. At this early stage it was discovered that a vigorous dealer organization was essential for the survival of a firm. The importance of dealers has not declined. Indeed, the strength of the dealer organization is now a crucial factor in the survival of any firm, no matter how large. The somewhat sensitive nature of dealer-manufacturer relations is due to the special needs of the manufacturer.

An attempt at monopoly control by the Association of Licensed Automobile Manufacturers ended in victory for the Ford Motor Co. in January 1911. The unhappy spectacle of the Selden patent group trying to extract tribute from this infant industry had two major effects.

First, the industry and the public learned to regard the business as one that should be free from monopoly controls. Ford, especially, was delighted with his role, and continued to be an "uncooperative" spirit in the industry—even avoiding the Automobile Manufacturers Association, one of the successors of the ALAM. Ford's attitude intensified the vigor of the competition in the industry, especially under the stress of the 1930's.

Senator O'MAHONEY. By whom were the members of this Association of Licensed Automobile Manufacturers, which apparently was overcome by the Ford Motor Co. in January 1911, licensed?

Mr. MOORE. I believe the name was the Electrical Automobile Manufacturing Co.—that is an approximate title. It held title to the Selden patent, and licensed it to manufacturers of automobiles.

Senator O'MAHONEY. The word "license" in this connection then means a licensee of a patent?

Mr. MOORE. Yes, sir; that is correct.

Senator O'MAHONEY. And the failure of this Association of Licensed Automobile Manufacturers holding the Selden patent arose from the fact that the Ford Motor Co. was unwilling to subject its growth to the patent?

Mr. MOORE. That is right, sir.

May I elaborate just a little on that story?

Senator O'MAHONEY. Yes; of course.

Mr. MOORE. According to testimony of Edsel Ford, the licensing association one time refused a license to Mr. Henry Ford on the ground that he was a fly-by-night operator, and they were not sure whether he was going to be a stable manufacturer.

Within less than a year they began actions against him for operating without a license, manufacturing his automobile without a license.

The litigation continued for a number of years, and finally a suit against Ford was dismissed on the grounds that the Ford automobile was using the 4-cycle engine, while the Selden automobile, which was patented, used a 2-cycle engine, and since all the automobile manufacturers by that time were using a 4-cycle engine, this meant the end of the effective power of the licensing association.

Senator O'MAHONEY. And then there developed in the automobile industry the practice of pooling patents; did there not?

Mr. MOORE. Yes, sir.

Senator O'MAHONEY. Has there been any recent change in that?

Mr. MOORE. That has become much less important since 1930.

Senator O'MAHONEY. Why?

Mr. MOORE. Fewer of the patents had been contributed to the pool, as I understand it. Firms in the subsequent agreements, subsequent to 1930, firms have not contributed all of the patents which they hold, and they themselves tend to regard it as less important vehicles for exchanging information.

Senator O'MAHONEY. By and large, according to what you have said in your testimony, the number of manufacturers in commercial production of automobiles fell from about 181 in 1903 to 6 about the present time?

Mr. MOORE. That is correct.

Senator O'MAHONEY. Did the patent—

Mr. MOORE. I am sorry that I spoke too quickly. The maximum number in existence at any one time was 88 in 1921; 181 is the total of firms who were actually in commercial production at one time or another between 1903 and 1926.

Senator O'MAHONEY. What you meant by your statement was between 1903 and 1926 there were 181 firms in commercial production at one time or another?

Mr. MOORE. At one time or another; that is right, sir.

Senator O'MAHONEY. But the highest number during that time was 88?

Mr. MOORE. Was 88.

Senator O'MAHONEY. What year was that?

Mr. MOORE. That was in 1921.

Senator O'MAHONEY. In 1921?

Mr. MOORE. I believe it was in 1921; it could have been 1922.

Senator O'MAHONEY. So that since 1921 or 1922 there has been a continuous reduction of the number of firms engaged in the manufacture of automobiles?

Mr. MOORE. Not quite continuous. There was a slight increase around 1929 or 1930. I have a chart on which I have plotted that. Should I bring that out at this time?

Senator O'MAHONEY. I think it would be interesting to see that chart, if you have it available.

Mr. MOORE. It simply is illustrative. It is a line graph showing the number of firms in existence at any one time. It shows the rate of decline since 1921. It has not been continuous.

Senator O'MAHONEY. But it has been, on the whole, a steady decline?

Mr. MOORE. Yes.

This [pointing] graphically depicts the change in the number of firms producing automobiles at any one time.

The lines at the bottom simply show the number of entrants and number of exits for the years up to 1922.

In some years there were a large number of new firms, 10, 12; other years or sometimes the same years, as many as 10, 12, 13 firms who failed.

Senator O'MAHONEY. That would appear to indicate that entrances into the field ceased about 1925; is that right?

Mr. MOORE. Since 1923 there has been no successful entrants, successful in the sense that he is still surviving. There were a number of entrants, as you see. That was not quite continuous around 1930. I can recall only a few of them. Cord was one, American Bantam—

Senator O'MAHONEY. There was a rise, and then a precipitous fall, and the entrances, as charted on this graph, took place, it would seem to me, about halfway between 1920 and 1930, which would be 1925; but your judgment is it was about 1923?

Mr. MOORE. That is right.

Senator O'MAHONEY. The exits were very rapid during the early twenties?

Mr. MOORE. Yes.

Senator O'MAHONEY. And none are reported there after 1925, but there have been some exits—

Mr. MOORE. Yes.

Senator O'MAHONEY (continuing). Recently?

Mr. MOORE. Yes. My data are simply not continued beyond that point, Senator.

Senator O'MAHONEY. Now, the heavy line means the number of firms remaining?

Mr. MOORE. Number of firms remaining in that year; yes, sir.

Senator O'MAHONEY. Back in 1923 you have the highest, which was 88. You were down to about 38 in 1929; there was a slight increase, and then there has been a more or less steady decline until now, according to this chart, the number of firms is less than 10?

Mr. MOORE. That is right.

Senator O'MAHONEY. Mergers have been approved in recent years which reduced the number to six?

Mr. MOORE. To six.

Senator O'MAHONEY. And the fight is not over yet?

Mr. MOORE. I do not believe it is.

Mr. McHUGH. Professor Moore, during the period in which there were the largest number of firms in the field, were there only a few producers doing the great bulk of the business?

Mr. MOORE. Not to the extent that it is true today. My memory is not exact on figures. It was true in 1921 that the Ford Motor Co. produced more than 55 percent of the total, yet the remainder was divided up more equally than it is today.

Mr. McHUGH. Is that the largest amount ever done by any single producer?

Mr. MOORE. So far as I know, that is the largest percent of the total market ever sold by a single producer.

Those figures vary, depending upon whether the historian records total produced or total number sold; the figures in the Wall Street Journal yesterday indicated that he had more than 60 percent in 1921; but those were figures of production and not of sales. Some of them were not sold that were made.

Senator O'MAHONEY. Do you have in your paper a final conclusion of opinion as to the reason for this steady decline in the number of manufacturers?

Mr. MOORE. Yes; I have.

Senator O'MAHONEY. I will not anticipate it by developing it. You develop it in your own way as you go along. I think it is important to describe that opinion as clearly as we can.

Mr. MOORE. I touch upon that in the description of the events in the 1930's.

Senator O'MAHONEY. All right.

Mr. MOORE. May I paraphrase some of this?

Mr. McHUGH. Yes; if you would rather speak from your notes.

Mr. MOORE. This is rather long and, as I say, it might be rather dull.

Senator O'MAHONEY. Well, that being the case, the whole of your paper will appear in the record together with the paraphrase.

Mr. MOORE. Another outgrowth of the licensing agency that was defeated by Ford was the formation of the Society of Automotive Engineers. This was a function that this group carried on.

This Society of Automotive Engineers contributed a great deal to the technology of the industry, without any discernible monopolizing effects, or none of which I am aware and, as has been already brought out, patent pooling by the AMA was also important for a time, but not much since 1930.

Two of the giants were created in this period, that is, up through 1910. Each contained two ideas which were to be essential for the growth of a successful firm.

In 1909 Mr. Ford announced the model T Ford. This was to be frozen in design, produced on a moving assembly line in such large quantities and for such a low price that, as he put it, he would sell to the other 95 percent of the market, claiming that present producers were only touching the 5 percent of the elite buyer.

The success of this principle was so marked that the transportation habits and living habits of the Nation were transformed.

The highly standardized nature of the product had to be modified later. But the principle of producing in very large volume and shaving costs to the bare minimum is one of the important principles on which the industry has grown.

His ideas on vertical integration became important to the industry. He integrated vertically on what I call an opportunistic basis.

When he found that he thought he could utilize his own personnel or his own plant to produce a part better than it was being produced, he would try to do so, or when he thought that he could teach suppliers a lesson by showing them how to do it or shaving the costs of doing it, he would try to do so.

Some of his vertical integrations defy explanation. Some of them, many of them, as you know, were later dropped.

Mr. McHUGH. Mr. Moore, did Mr. Ford integrate by buying other companies?

Mr. MOORE. Not that I know of, with the exception of the horizontal integration into the Lincoln. I do not know of vertical integration that involved the purchase of parts. They have occurred, but I have not run across them.

Durant, William Durant, on the other hand, transformed General Motors Corp. in this period, and seems to have had two principal objectives, that is, as far as the production of automobiles is concerned.

He wanted a diversified product line; he wanted this cushion to be provided against the failure of any one model; and he felt that financ-

ing by bankers, by the stock market or by other industrialists, was important to creating a stable firm.

He succeeded in acquiring a line of successful automobiles with a considerable waste involved because he did discontinue more cars than he continued to produce. Some of them were quite experimental. He was only giving them a try, in his own terms. He wanted to acquire as many different kinds of cars as he could.

Although he used the holding company device, as did many of the trusts of the period, I am unable to determine whether he had an idea of monopolizing the industry.

He might have bought Ford, Reo, and Maxwell-Briscoe, but he was unable to raise sufficient cash. These people were willing to sell to him at one time, and he was anxious to buy.

Mr. McHUGH. In connection with this early history of General Motors, Professor, do you happen to know what the relative market position was of the Oldsmobile and Cadillac line which Durant added to his Buick?

Mr. MOORE. I do not know of the percentage in percentage terms. Cadillac was one of the outstanding cars—remember, these were all small firms in 1908. Ford itself was not a big firm at that time, but relative to the other small firms, Cadillac was important; Olds had been the most important. Reo was important among the small firms; Maxwell-Briscoe was, and he acquired the Oakland, which was one of the important firms at that time. A lot of others that he acquired were very unimportant.

Mr. McHUGH. When he acquired Oldsmobile, then, he was actually buying the company which was the largest producer in the field at that time?

Mr. MOORE. No, sir; that is not true. It had been. It was—it had declined by the time he bought it. It had declined in relative terms and in absolute terms, and Mr. Olds himself was out of the firm by then.

Durant made the statement that is quoted somewhere that he paid \$1 million for a name when he bought Oldsmobile. It was not one of the major producers in that year.

Mr. Hardy, A. B. C. Hardy, quotes Durant, for instance, as to trying to analyze what Durant was doing, "I was for getting every kind of car in sight, playing safe all along the line."

By "playing safe," he meant having a wide variety of producers. He did not say every car, but he said every kind of car, and Mr. Hardy interpreted this to be variety.

Mr. McHUGH. Professor, if Mr. Durant had been successful in his attempt to acquire Reo and Ford and Maxwell-Briscoe at that time, what would have been the approximate percentage of the market he would then have controlled?

Mr. MOORE. I do not know.

Mr. McHUGH. Would not this—

Mr. MOORE. A large number of firms in existence at that time was the situation. They were coming and going very rapidly. I do not know the production figures of that year, 1908, so I cannot answer that question.

Mr. McHUGH. Would not this have represented, though, all the principal producers of cars at that time?

Mr. MOORE. It would have represented a large portion of the major producers, of the best-known producers; that is correct. I do not know just what proportion.

His need for funds in 1910 caused him to lose control of General Motors to bankers. From 1911 through 1922—

Senator O'MAHONEY. Wait a minute, you are skipping the formation of the holding company, the Chevrolet Motor Co., as purchased by the existing Chevrolet Motor Co., and then the entry of the Du Ponts with funds.

Did the Du Ponts eject Durant?

Mr. MOORE. They did in 1920, Senator. I have not come to that section of it yet. I am just beginning the section on the period of history from 1911 through 1922 in which this occurred.

Senator O'MAHONEY. That is what I am reading. It is on page 18.

Mr. MOORE. This is the part I was about to begin.

Senator O'MAHONEY. All right.

Mr. MOORE. My emphasis in the period is the growth of two giant firms which were acquiring characteristics that have since become essential to the survival of an automobile industry.

The total industry production grew until in 1922 it was 2,656,000 vehicles per year.

I have already indicated that in 1921 Ford had 55 percent of the total.

The mass-production process, the moving production line was completed, according to Ford, by 1914, and this principle of production came to be adopted by all of the firms that were able to survive.

The rapid growth of the demand permitted the easy establishment and growth of new firms.

The total number of producers reached a maximum of 88 in 1921.

Durant was still active in the industry. He backed Louis Chevrolet's development of a new, light automobile to compete with the Ford.

The Chevrolet and the Little, both produced by Durant firms, were moderately successful.

In 1915 Durant established the Chevrolet Motor Co., of Delaware, a holding company. It first acquired all of the stock of the existing Chevrolet Motor companies. Then with funds supplied partly by the Du Ponts, it acquired a majority of the outstanding common stock of the General Motors Corp., of New Jersey.

Senator O'MAHONEY. Well, now, that is what I was trying to clarify.

On page 17, at the end of the paragraph, paragraph 2, your last sentence says:

In any case, the need for funds in 1910 caused him to lose control to a banking syndicate under terms that were extremely favorable to the latter.

Who was the "him" referred to in that sentence?

Mr. MOORE. Durant.

Senator O'MAHONEY. So Durant in 1910 lost control to a banking syndicate?

Mr. MOORE. Yes, sir.

Senator O'MAHONEY. Then we turn to page 18, and there the concluding—the second sentence or the third sentence from the end of the second paragraph:

"In 1915 Durant—that is 5 years after he lost control to the banking syndicate—"established the Chevrolet Motor Co. of Delaware—a holding company."

Mr. MOORE. Yes.

Senator O'MAHONEY. This company then acquired the stock of the existing Chevrolet Motor companies.

Mr. MOORE. There were several in existence then.

Senator O'MAHONEY. Then with funds supplied by the Du Ponts, it acquired a majority of the outstanding common stock of General Motors.

What happened to the banking syndicate?

Mr. MOORE. The banking syndicate had made loans to General Motors Corp., and as conditions for the loans they had controlled the finances of the corporation, and some of their representatives were on the board of directors, and Durant himself was out as president—this is according to the stipulations made when the loans were made.

Now, the funds that were raised by the Chevrolet Motor Co. were in turn, used to complete the commitments, commitments which were being made to the bankers by the operation of General Motors itself, and eventually the loans to the bankers were paid off.

Senator O'MAHONEY. When was Durant finally forced out, and by whom, the banking syndicate or the Du Ponts?

Mr. MOORE. In 1920 the Du Ponts and the Morgan banking firm, J. P. Morgan banking firm.

Mr. McHUGH. Was not Mr. Durant out entirely between the years 1910 and 1915, when the bankers had control of the corporation under a voting trust?

Mr. MOORE. He was out entirely during that period.

Mr. McHUGH. It was shortly after 1915 that Mr. Durant began to acquire an interest in the Chevrolet Co.?

Mr. MOORE. He had an interest in the original Chevrolet Motor Co. engaged in producing and selling Chevrolet cars; that was acquired during that period. I do not know just what dates, between 1910 and 1915. In 1915 he formed a new Chevrolet Motor Co., which was a holding company.

Mr. McHUGH. But during the time he was acquiring his interests in Chevrolet, he was completely out of the control of the General Motors Corp.?

Mr. MOORE. He was completely out of control of General Motors Corp. He owned stock.

Senator O'MAHONEY. Proceed.

Mr. MOORE. Unable to persuade—this was after the formation of Chevrolet Motor Co., the holding company, and the purchase of the outstanding common stock of General Motors Corp. of New Jersey—unable to persuade General Motors directors to admit the Chevrolet Co., Durant voted Chevrolet's GM stock and secured control.

He became president somewhat reluctantly, when Charles Nash resigned, and Pierre du Pont became chairman of the board.

General Motors Corp. of Delaware was organized—at first a holding company—with the right to pyramid.

Now, the presumably small company, Chevrolet, actually owned General Motors. The General Motors holding company was formed to turn this upside down, and put General Motors on the top, as Durant thought it should have been.

Most of the subsidiaries were then dissolved, becoming operating divisions of General Motors.

Under the leadership of Pierre du Pont and Alfred P. Sloan, this was developed into the famous decentralized management plan, whereby a maximum of divisional autonomy in operation was combined with central coordination of finance, research, accounting and inventory control.

The Du Pont interest in General Motors was increased by further purchase of stock, so that by 1920 it amounted to 23.96 percent of the outstanding stock.

The Du Pont interest has remained at approximately 23 percent since that time.

Seltzer notes that in 1923 the Du Ponts were called upon to sell the General Motors stock they had purchased from Durant, so it could be resold to General Motors executives. Instead they sold their stocks to their subsidiary, General Motors Securities, thus retaining undiminished control of General Motors Corp.

He wrote in 1926:

Control of the General Motors Corp. is possessed by E. I. du Pont de Nemours & Co., and its affiliated interests.

Senator O'MAHONEY. Will you explain to whom they sold their stock in the subsidiary, General Motors Securities, and how, by the sale of that stock did they retain undiminished control of General Motors?

Mr. MOORE. General Motors Securities had been formed, and General Motors Securities owned a good deal of stock in General Motors Corp.

Senator O'MAHONEY. Well, General Motors Securities was a Du Pont holding company?

Mr. MOORE. It was a Du Pont organization; it was a Du Pont subsidiary. It was owned by the Du Pont family, and the Du Pont Corp.

The stock that they were to sell was some of the General Motors Corp. stock that they had acquired from Durant.

I understand your questions better now, Senator, I think. There was a paragraph missing, which is the description of the—perhaps this comes later. I describe it very briefly later, the event of 1920 in which Mr. Durant—

Senator O'MAHONEY. Well, sometimes paragraphs are dropped from mimeographed statements. Will you see that it is corrected for the record, please?

Mr. MOORE. In 1920 Mr. Durant tried to support the price of General Motors Corp. stock in a falling market. He engaged in buying to the largest extent that he could, with his own resources and resources that he could borrow, pledging General Motors Corp. stock that he already owned, plus that which he was buying, in an effort to prevent the fall and decline in the price of General Motors stock.

Eventually his indebtedness reached several million dollars. He was not himself quite certain how much he owed.

The banks who had loaned him the funds began to become concerned over his position in the market, and the Du Ponts and J. P. Morgan banking firm together assessed the situation, found out how much he owed, and put funds into the purchase of this stock to clear up Mr. Durant's debts, and to prevent the dumping of all of this stock that he owned on the market by foreclosure by the banks who had loaned him the money.

Senator O'MAHONEY. Now, referring to the last sentence in the first paragraph of page 19, it reads:

He wrote, in 1926:

"Control of the General Motors Corp. is possessed by E. I. du Pont de Nemours & Co. and its affiliated interests."

Does that mean that that was the situation in 1926?

Mr. MOORE. That was the situation, according to this recognized historian of the industry. I quote this as an indication of judgment made in 1926 as to where the control lay.

Senator O'MAHONEY. As of that time?

Mr. MOORE. As of that time.

Senator O'MAHONEY. Yes. Thank you very much.

Mr. MOORE. Neither the purpose nor the extent of this control is entirely clear. However, John J. Raskob, a Du Pont executive, once wrote this:

Our interest in the General Motors companies will undoubtedly secure for us the entire Fabrikoid, Pyralin, paint, and varnish business of those companies, which is a substantial factor.

Arthur Pound, in another history—his was the history of the formation of General Motors—placed this motive in a broader context. E. I. du Pont de Nemours, being primarily a producer of explosives at that time, was periodically faced with excess capacity and large accumulations of earnings, both being the results of having just supplied someone's war needs.

In 1915 it was clear that it would again be in such a position within a few years. A growing peacetime industry might provide a profitable investment for funds, and a market for their expanded productive capacity.

Accordingly, they entered the automobile business.

Durant had needs that such a group might supply. He wanted to get on with the job of building a sound automotive giant. He needed money and power, and relief from the strictures of banker control. This was referring again to his 1910-15 exile from General Motors, due to the stringencies placed on him by bank loans.

He needed the confidence of the banking community, however, which he feared he did not have.

As a result of this combination, with the Du Ponts firmly in command of finances, banker and public confidence in General Motors rose.

Their presence insured that stability would have a strong voice at the council table—

again, to quote Mr. Pound.

The Du Ponts, in turn, were assured the power to protect their investment, and had the privilege of developing this market for their products.

Mr. McHUGH. Professor, the Du Ponts bought into General Motors. Did this represent anything more than a purchase of stock from existing investors or did they make a positive contribution in the form of capital to the company?

Mr. MOORE. As far as I know, the operation was one of buying stock that was already issued, or in the market.

Mr. McHUGH. It simply represented a transfer in ownership?

Mr. MOORE. As far as I know.

A serious financial misadventure resulted in Durant's ouster. Development of the corporation along the general lines laid out by Durant and the Du Ponts continued after his departure, however.

E. I. du Pont de Nemours and its subsidiaries sold increasing quantities of their products to the growing firm.

Several features of the organization of General Motors operated against their securing exclusive privileges with the General Motors divisions, however.

First, since much of the horizontal and vertical integration had been achieved by the acquisition of firms and their personnel, considerable influence continued to be exerted by former owners of the subsidiaries.

Second, the principle of decentralized management gave autonomy and responsibility for costs and quality to division managers. Both of these factors resulted in resistance to total penetration by Du Pont salesmen.

Third, a management principle was developed which advised against reliance upon a single source of supply for any product.

Fourth, the principle of competitive procurement of parts and supplies tended to force the Du Pont enterprises to bid low if they were to retain their markets.

Thus, although General Motors was Du Pont's largest customer between 1939 and 1949, only two-thirds of its finishing materials came from Du Pont.

Senator O'MAHONEY. Well, what would you consider a large amount?

Mr. MOORE. That is a very satisfactory amount, Senator.

Senator O'MAHONEY. I should say so. The Du Ponts were not starving at that time, were they?

Mr. MOORE. No.

In 1949, the purchase of tires from United States Rubber Co. by General Motors divisions varied from 50 to 64 percent of the various divisions' needs. These are, of course, highly satisfactory sales records.

Senator O'MAHONEY. Do you have a list of the commodities which Du Pont was selling to General Motors?

Mr. MOORE. No, sir; I have nothing like a complete list. I have in the—

Senator O'MAHONEY. Here is the sentence:

Thus, though General Motors was Du Pont's largest customer between 1939 and 1949, only two-thirds of its finishing materials came from Du Pont.

Now, that means that somewhere, there is a reference here to the 126 Federal Supplement 235—that is a legal case, the title of which is not given—thus it is plain that during this 10-year period, two-thirds of the finishing materials, at least, came from Du Pont.

Mr. MOORE. Yes, sir.

Senator O'MAHONEY. Now, were there any other materials?

Mr. MOORE. There was coated fabric, which was a very important material. It declined in importance as the all-steel bodies were produced, but returned again in some importance as upholstery materials turned from cloth to coated fabrics.

There were more general industry chemicals, there were tires, of course, probably next in importance to coated fabrics and finishes.

Senator O'MAHONEY. I take it that—

Mr. MOORE. This represents a summary of the evidence presented in *United States versus E. I. du Pont de Nemours, General Motors, and United States Rubber.*

Senator O'MAHONEY. Through this reference you can get the entire list?

Mr. MOORE. I would not say a complete list was presented to the court. I simply do not know how complete those lists were that were presented in the exhibits in court.

Senator O'MAHONEY. If you can give us from your own research a statement of the commodities of all kinds, not finishing materials alone, but of all kinds, sold by Du Pont to General Motors, I think it will be helpful.

Mr. McHUGH. I think, Senator, we will have some more detailed information on that in connection with some subsequent testimony, probably this week.

Senator O'MAHONEY. Very good.

Mr. MOORE. The next section is a rather long period, but I describe it as the period in which the Big Three developed as important factors in the industry, and you have the term "independent" becoming more important, describing the small firms existing alongside three major producers.

This is the period of extremely rapid decline in the number of firms.

The Chrysler Corp., formed in 1923, soon grew into a major producer by completing its product line, purchasing the Dodge Bros. properties, adding to the Chrysler and developing two of its own products, Plymouth and the DeSoto, to complete the price line, and advancing the notion of frequent model changes, and highly styled products, capturing the public's attention in this way, plus the fine engineering that went into cars, becoming by 1937 more important in the industry than Ford, in terms of total sales.

The intense rivalry between the Big Three blanketed the market to the extent that entry was virtually closed and the exit of a small firm exceedingly easy.

There is no evidence of any overt actions on the part of existing firms to prevent entry or to hasten exit.

Professor Vatter puts it this way:

Furthermore, the emergence of such immobility appears entirely possible in the absence of any significant "collusive," deliberate, or "artificial" barriers to entry: The barriers are imminent in the very structure and *modus operandi* of markets characterized by fewness, together with heavy fixed equipment, plateaus in the secular trend of demand, technical complexity of the product, plant and product diversification, extensive marketing and/or servicing facilities, product diversification, and, in the case of the auto industry, retooling for major body changeovers.

Mr. McHUGH. Professor, does the difficulty a manufacturer has in obtaining an adequate dealer organization raise an important barrier to entry into the field today?

Mr. MOORE. I would say it is of considerable importance. It takes time and experience in relations with dealers; it takes a volume for dealers to sell.

There are plenty of candidates for dealerships if a new firm were to start. But unless they can begin quite soon to sell fairly large volumes of cars, they are not going to make their living selling cars.

As I said earlier, they may be primarily farm-implement dealers or auto-repair shops, and as dealers they may, therefore, not be as competent, experienced as the existing dealers who live primarily by selling cars.

Mr. McHUGH. Has the increased emphasis upon annual model changes, and the very high cost of tooling that that involves, placed a particular barrier against entry by manufacturers?

Mr. MOORE. An extremely important barrier because it is not a matter of successfully designing one car, setting up an efficient production plant to produce it.

You have to design one every year, or at least every 2 or 3 years at rather large costs in engineering, tooling, and you must sell within that 3-year period enough cars to justify those tremendous design and tooling costs.

The period of 1946 through 1954 I simply describe as the satisfaction of the deferred demand, and another leveling off period at the end of which we saw some more attrition in the number of firms.

In addition to the mergers which reduced the firms from 9 to 6, a considerable reorganization of all the firms, except General Motors, that is, decentralized staff and line type of organization, seems to have been introduced into them.

Their product lines have undergone considerable changes, and we do not know yet what will be the results of automation in part of the process, and the new types of labor contracts they have.

To quote Mr. Henry Ford II, to indicate what Mr. Ford has done, he estimated that 95 percent of Mr. Ford's facilities are either now or have been modernized since 1946.

Now, in 1955, looking into the future, I predict a period of intense rivalry and growth. It is likely that a fairly rapid increase in total sales will occur so long as the total economy enjoys prosperity. This will be a result of the rivalry between the remaining firms, who must continue to operate on the assumption that the structure of the industry is not static.

Intensive selling efforts of the type observed in 1955 will be employed. The objective of all but one of the producers is the achievement and maintenance of sufficient size to warrant some feeling of comfort.

The objective of the largest firm must be to at least retain its relative size, for the mores of the industry regard relative decline as evidence of failure.

The contest is more difficult for the smaller firms, for they operate closer to the margin where small declines become rapid declines.

Also, since all of the seven conditions for the survival of a firm are varieties of economies of scale, the small firms must use sharper pencils, be content with lower rates of profit, or both.

Now, I then try to indicate some implications of the present structure of the industry, and I only suggest four possibilities, and explore them briefly.

(1) RELATIVE PROFIT MARGINS AND ECONOMIES OF SCALE

Cost figures are not available in sufficient detail to provide a test of the hypothesis that the survival conditions add up to significant economies of scale.

Crude verification is provided by relative rates of profit in the industry, however. Figure 2 shows relative profits as percents of stockholders' investments. Figure 3 shows relative profits as percents of sales.

May I let tables 2 and 3 be printed in the record? I do have a graph which presents pictorially table 3. Testing the hypothesis, there is a regular relationship between size and profit as a percent of sales. Crude as this is, as a measure of efficiency, this is one that is readily available.

Arranging the firms in descending order of size, measuring size by 1953 net sales, the height of the bars indicates profits as percents of sales.

Senator O'MAHONEY. There are figure beside each column?

Mr. MOORE. Yes.

Senator O'MAHONEY. How do you interpret those?

Mr. MOORE. Those figures are profits as percents of net sales.

The top figure here on the scale is 12 percent. So that in 1949 and 1950, General Motors' profits on its percent of sales were around 11 or a little more than 11 percent. These are simply the figures taken from Moody's Manual, as reported by the firms.

Senator O'MAHONEY. In other words the cash value, the cash return, which they received from the sale of cars, and under your description the dealers always pay cash for the cars to the manufacturer—

Mr. MOORE. They do.

Senator O'MAHONEY. These receipts were sufficient in these 2 years to produce a profit of in excess of 11 percent of the total sales for General Motors?

Mr. MOORE. May I correct one statement, Senator? That is not from the sale of cars, but from the sale of all products.

Senator O'MAHONEY. From the sale of all products.

Mr. MOORE. Yes.

Senator O'MAHONEY. Yes.

Of course, all products, perhaps most of the products, go to the dealers, I suppose?

Mr. MOORE. Yes, sir.

Senator O'MAHONEY. And that is by far the greatest percentage on any of the scales shown here of six different groups?

Mr. MOORE. That is correct; that is the largest of the firms.

Senator O'MAHONEY. And these figures were taken from Moody's?

Mr. MOORE. Moody's Manual, industrials; yes. Those sales figures—

Senator O'MAHONEY. These figures do not represent your judgment of what these sales were, or what the percent of the profits were, but this chart is built wholly upon—

Mr. MOORE. Moody's Manual.

Senator O'MAHONEY. The report of Moody's Manual?

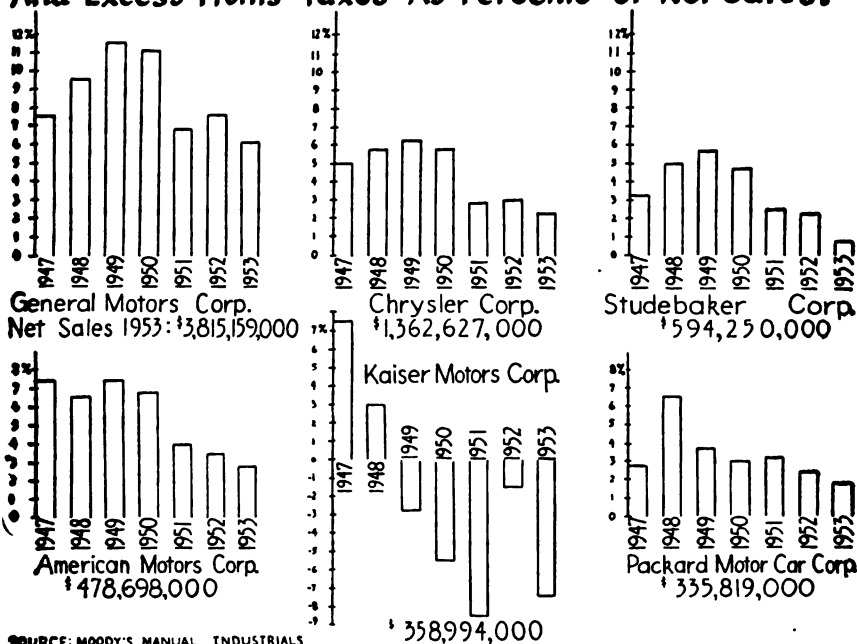
Mr. MOORE. Yes.

Senator O'MAHONEY. I think, Mr. Burns, we should make an arrangement to—

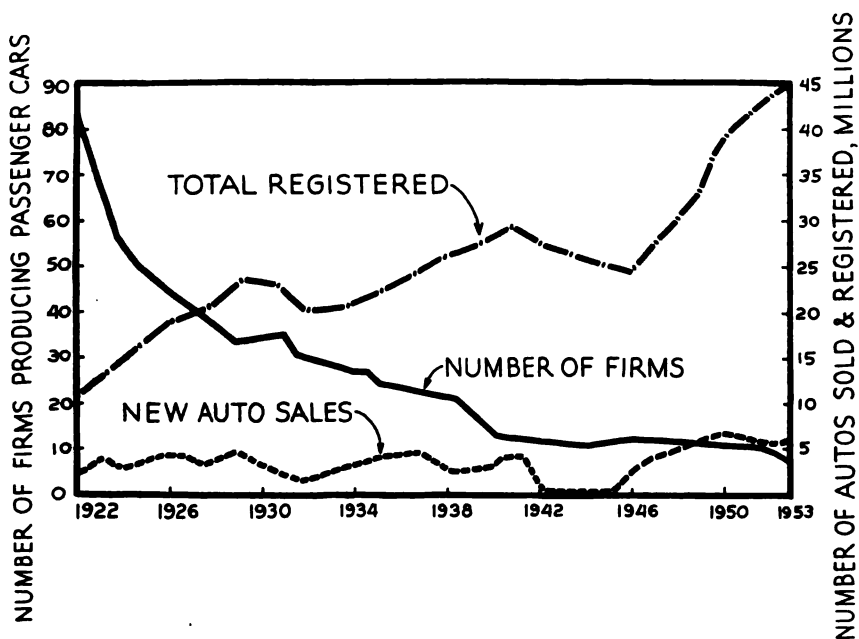
Mr. BURNS. Photograph it, reduce it in size, and include it in the record.

Senator O'MAHONEY. Yes; and the other charts that he may show. (The documents referred to follow:)

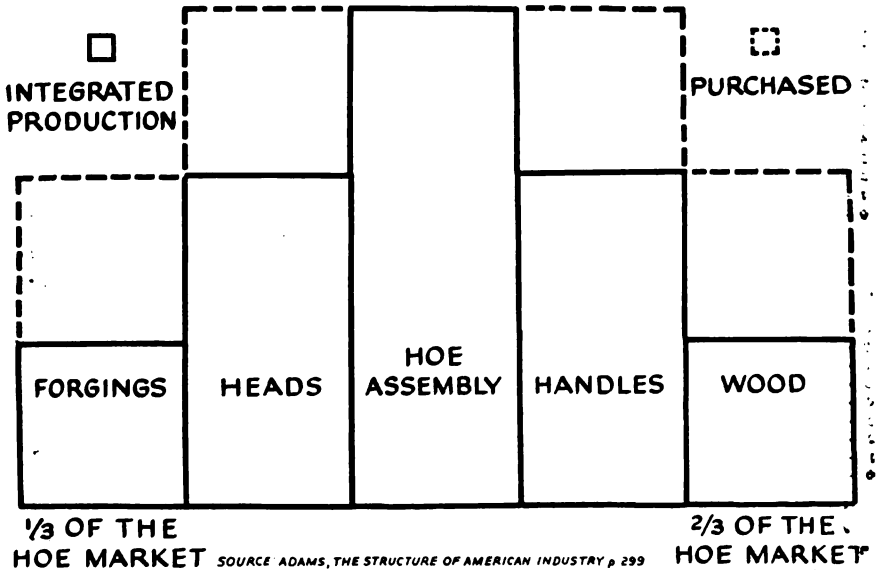
Net Profits After Federal, State And Foreign Income And Excess Profits Taxes As Percent Of Net Sales.



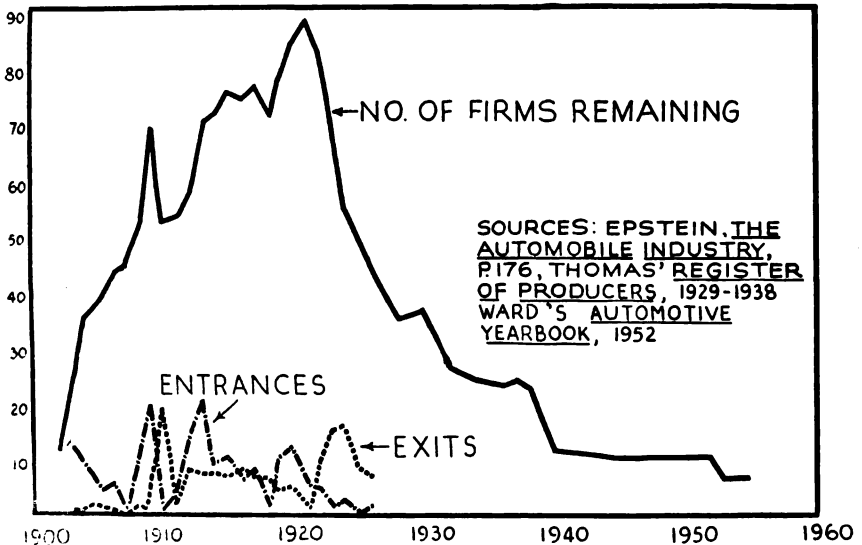
SOURCE: MOODY'S MANUAL INDUSTRIALS



Tapered Vertical Integration



ENTRIES, EXITS AND FIRMS REMAINING IN THE AUTOMOBILE INDUSTRY, 1902-1955



Mr. MOORE: Both measures, that is, profits as to percent of sale and profits as to percent of stockholders' investment, show an unmistakable tendency for profit margins and earnings in investments to vary directly with size. It is not an invariant relation; differences in efficiency do exist for reasons other than size. Also, short-run changes in the sales of a firm of given size have great effects on profits.

There is still another defect to the use of profit as a measure of efficiency. We may grant that the products are sold in sufficiently competitive markets so that prices are accurate reflections of quality. Still, costs may be low for more than one reason. One reason is a legitimate economy in the use of resources. Another reason is that the resources may be purchased cheaply, not because of the economy of large quantity purchasing, but because of the use of superior bargaining power. The labor resource is purchased in a market that is open; and on roughly the same terms for all manufacturers. Parts and supplies, however, may be subject to unequal bargaining in the industry. This possibility will be discussed below.

If the economies of scale are as pronounced as crude measures indicate, this appears at first to be a classic case where monopoly is to be expected. If economies of scale continue to accrue to the largest firm as it grows, then it will continue to grow at the expense of all smaller firms. Fortunately, this is not quite the classic case, which assumes that the product of the largest firm will satisfy all segments of the demand. This is not true of automobiles. Professor Epstein's conclusion still holds, and this conclusion was drawn in 1926:

Automobiles, however, are distinctly specialty products. Thus monopoly, in the sense of an all-exclusive control of the market, is almost unthinkable.

The danger is that, since entry is virtually closed, a serious error by a small firm would be irremediable; the number of survivors could be reduced by one for each such error.

(2) MONOPOLY POWER: PARTS AND SUPPLIES

A firm whose power dominates a market in which it buys may enjoy more than the normal economies of large size. It may enjoy a specious sort of economy if its bargaining for a certain automotive part forces the price below the cost of producing the part, although all possible economies have been employed. The powerful buyer is not necessarily aware that he is doing this—for the parts supplier will find it profitable to take any order, so long as the price covers the direct costs, rather than to lose an important customer and have idle capacity. The abnormally low price will allow him to get by in the short run, but it will not permit his survival in the long run, for it does not cover his indirect costs, nor pay a return on his capital. He will fail, or turn to some other field, unless he can recover his losses by charging higher prices to other automobile manufacturers for the same part, or to customers who buy his other products. No matter which of the three eventualities occurs, someone is paying a price so that the large firm may appear efficient.

Fortunately there are certain checks upon this power, too. The partially integrated firm would find it a poor long-range policy to destroy many of its sources of supply. Since automobile firms buy from each other they must check the legitimacy of each other's buying and selling

prices. Since further integration is open to any firm, it need not pay someone else's costs for long. So long as several automotive and other outlets exist, the supplier has some choices.

(3) MONOPOLY POWER: PARTS IN THE AFTER MARKET

No matter what their degree of vertical integration, producers tend to market genuine parts through their dealers and through franchised parts distributors. There are advantages to the public in this arrangement. The number of parts is large, and this is an efficient way to distribute them, and to guarantee to customers the kind of quality which the auto assembler feels they should get. However, since both dealer and parts distributor are urged to handle only genuine parts, the parts manufacturer who does not sell through the automobile manufacturer has considerable difficulty in this part of the market.

According to Davisson, auto manufacturers use the dealers and other franchised parts distributors as competing outlets for genuine parts. Though they compete with each other, the combined actions of these two outlets result in strengthening the position of genuine parts versus nongenuine parts (those not sold by the automobile manufacturer). Davisson points out that the position of any particular auto producer in the marketing or repair parts depends upon:

- (1) The size of the assembler and the extent to which it is engaged in manufacturing parts of its own and other makes.
- (2) The number of its makes in the car population.
- (3) The size and caliber of its dealer organization.
- (4) The trade acceptance for its original equipment.
- (5) The variety and strength of rival after-market channels.

Of course, there are many rival after-market channels, notably automotive chains and mail-order houses. Nondealer repair shops are free to buy from any sources. The car owner, however, may learn to insist upon "genuine" parts to protect himself against bad quality. Actually, if all parts manufacturers who meet the specifications for "genuine" parts could sell freely to the dealers and distributors, using the "genuine" label, then they would not be harmed. Actually, that is seldom the case.

(4) THE DEALERS

The one-sided nature of dealer franchises has been discussed. There are many features of these arrangements which protect the public against the local monopoly power which dealers might exercise. Also, since the manufacturer is always interested in volume sales and in the reputation of his product, including its servicing, he needs considerable power over dealer policies.

Much of the price competition which is the indication of vigorous rivalry in the industry is achieved by the dealers. This may be sound; the high-volume low-margin principle may be applied to distribution as well as to manufacture. However, the effects of disparity in the sizes of manufacturers are reinforced by differences in their dealers' volumes. Small manufacturers can do much less in the way of "forcing" or controlling dealer policies, for their potential volumes are generally smaller. Unless he is treated "better" in many respects, the dealer may be tempted to switch to a Big Three make. Thus, an in-

portant competitive practice—the dealer's price cutting—is strictly rationed to the small manufacturer.

One might ask whether the dealers should be forced to bear all of the burden of price flexibility, since it is the manufacturer who insists on expanding the total volume of sales. Actually, the dealers do not bear all of it, for they are rewarded by bonuses, special price, et cetera, if their sales exceed certain volumes. A bonus system may be psychologically superior to a straight price reduction in motivating dealers, just as high trade-in allowances may be superior to price cuts in attracting consumers. Yet the failure of manufacturers to reduce their prices across the board means that they are preserving their margins; only giving up enough of them, in the form of bonuses, at their discretion, to motivate dealers.

(The prepared statement submitted by Mr. Moore in its entirety is as follows:)

My name is Donald A. Moore. I am a member of the department of economics at Michigan State University and author of a chapter on the automobile industry in *The Structure of American Industry* (Walter Adams, editor), published by the Macmillan Co. in 1954.

THE STRUCTURE OF THE AUTOMOBILE INDUSTRY

Introduction

My statement will be confined to some observations on the structure of the automobile industry. The present structure of the industry is the result of a complex mixture of technology, business organization, and public acceptance of the product. The analysis of the industry is divided into four steps. First, its present composition will be described briefly. Second, seven requirements for the survival of a firm as a designer and assembler of automobiles will be suggested. Third, the history of the industry will be outlined, with special emphasis on the growth of firms whose organizations and products meet these seven requirements for survival. Last, some implications of the present structure of the industry will be explored.

The industry's present structure

The automobile assembly industry may be described as an oligopoly, characterized by competition between six firms; a "Big Three" and three "independents." However, this is neither a static picture, nor a very complete description of the business of producing automobiles.

The industry has never been static in structure for many months at a time. Firms have changed in relative sizes, their organizations and their product lines have always undergone rapid changes, and the number of firms has changed frequently. Early in 1953, there were six independent producers. In 1953, the Kaiser Motor Co. purchased the Willys-Overland facilities, and the American Motors Corp. was formed by merger. In 1954, the Packard Motor Car Co. and the Studebaker Corp. were merged. The Kaiser Motor Co. sold negligible quantities in 1955; there is some reason to doubt whether it will continue as a domestic producer of passenger cars. Approvals of the 1953 and 1954 mergers by the Department of Justice and the Federal Trade Commission were based on the proposition that the mergers would help to maintain competition in the industry by strengthening the remaining small firms.¹

The product lines have been changed considerably since 1953. Ford and Chrysler have each added a luxury model. Ford is considering a fifth model to fit between the Mercury and the Lincoln.² The merged independents have consolidated their offerings, and some of the small-sized models have been dropped.³ The sport cars produced by Ford, General Motors, and American Motors may develop a significant new market, besides serving as trials for new body styling and other features. The line-expansion activities of the big three may increase the difficulties of the remaining independents, who have in the

¹ *Automotive News*, May 23, 1955, p. 2.

² Conversation with an executive.

³ The Hudson Jet, the Henry J. and the Allstate.

past relied upon the distinctiveness of their models when compared to the same mass-produced cars.⁴

Extensive reorganization has been going on within all of the firms except General Motors. One of the principal objectives seems to be a decentralized, staff-and-line type of organization. Greater vertical integration seems to be an objective of several firms. Diversification into nonautomotive products is characteristic of most firms and is being pushed vigorously by some of them.

As Ford and Chrysler vie for second place in the industry, and as the Chevrolet division and the Ford division battle for first in sales, the total sales of the big three rise—sometimes at the expense of the independents. Furthermore, if automation is widely adopted, and if the impact of an annual wage supplement were to be left in declining markets, the advantages of large size might become more pronounced. In short, it is a brave man who will predict the structure of the automobile assembly industry for more than a year or two ahead.

This is still only a view of the surface of the industry. Like an iceberg, most of it is out of sight. The Bureau of the Census lists 1,904 firms engaged in the production of automobiles and parts. This does not include suppliers of glass, tires, upholstery, or paint. General Motors alone is said to purchase from 21,000 concerns,⁵ though it has the greatest degree of vertical integration of all of the producers. There are more than 44,000 automobile dealers, 85,000 nondealer repair shops, 188,000 filling stations, and between 9,000 and 10,000 automotive wholesalers with repair facilities.⁶ The relationships which exist between the auto manufacturers and these firms, particularly the parts manufacturers and the auto dealers, involve some of the most interesting intraindustry competitive patterns that one can find. These will be considered later.

The seven conditions for survival

Certain conditions must be met by any firm which hopes to survive as an automotive manufacturer. Clearly, success does not require all firms to meet these conditions in equal degree. Some would argue for a shorter list, or for a longer list, or would argue that outstanding success in certain directions would exempt a firm from meeting other requirements. Yet no firm can—on penalty of failure—ignore the importance of these seven requirements. Briefly stated, the survival conditions are (1) a diverse product-line covering a considerable part of the price range; (2) the ability in most years to sell a sufficient quantity of autos and other products to realize the economies inherent in the mass production process; (3) adequately financed, dependable, and geographically well-distributed dealer and service facilities; (4) financial resources adequate to bear the cost of inventories, research, model changes, and occasional bad years; (5) an optimum combination of vertical integration and outside supply sources; (6) the engineering and market knowledge necessary to innovate without departing from the market's notion of an acceptable automobile; and (7) the existence of a satisfactory used-car market for the product.⁷

(1) *A diversified product-line.*—Ignoring for the present the importance of nonautomotive products and the sale of parts and accessories, one cannot but agree with William C. Durant that the automobile offerings should be varied. Some models do not sell in some years. The fixed costs incurred in bringing out a model are so great that financial failure might result—as it has for many small firms. Several models not only provide cushions, but, by appealing to every purse, they maximize the general public interest in the firm's line. In fact, unless a firm can successfully invade the lowest price bracket, where more than one-half of all cars are sold, it may not be able to achieve sufficient total volume to survive. All three of the independents now offer cars in the low-price class, but they have not really successfully invaded this market. Also, there are many economies in research, design, financing, sales, and tooling that can be spread over all models. General Motors clearly illustrates this with its 3 basic bodies for 5 cars, its motoramas, etc. A principal objective of the mergers of the independents was the rationalization of model design, production and promotion.

(2) *Volume adequate to realize the economies of mass production.*—The industry was built on the low-price-large-volume principle. Though the emphasis on low price has been replaced by an emphasis on product improvement, the large

⁴ William B. Harris, *Last Stand of the Independents?* Fortune, December 1954.

⁵ Automotive News, March 28, 1955, p. 2.

⁶ Charles N. Davidson, *The Marketing of Automotive Parts*, Michigan Business Studies, v. xii, No. 1, Ann Arbor, Bureau of Business Research, University of Michigan, 1954, p. 4.

⁷ Donald A. Moore, *The Automobile Industry*, ch. VIII in Walter Adams, editor, *The Structure of American Industry*, 2d ed., New York, Macmillan, 1954, p. 294.

volume is even more important today. It has been estimated that the industry spent \$1 billion in development and tooling for the 1955 models. Such radical model changes generally occur only once every 3 years, but annual face lifting and promotional expenses must be incurred. Such costs are not proportional to the volume of production, but are nearly fixed. The small firm must be as active in innovation as the large one, in order to sell its models; hence a lower limit to size may be set by this factor alone.

The production process itself requires a continuous large volume in order to achieve low cost. Possible automation of many of the processes may require ever larger volumes—the effect of this development on the structure of the industry cannot yet be predicted.

(3) *Adequately financed, dependable, and geographically well distributed dealer and service facilities.*—The customer does not deal with the manufacturing oligopoly, but with the dealers who form a series of imperfectly competitive markets serving every town and village in the country. While there seem to be enough candidates for dealer franchises, the task of assembling and maintaining a system of dependable sales and servicing outlets for every community is not an easy one. Small producers find that if their dealers are not able to depend upon sales for large parts of their incomes, they become primarily repair shops, used auto dealers, or farm implement dealers, to the disadvantage of the promotion and servicing of new autos. A new producer finds this a significant barrier.⁸ Also, dealers with small volumes have great difficulty meeting the price competition of large-volume dealers.

The producers early in the history of the industry discovered the importance of the dealers. In fact, many new firms secured significant portions of their financing from the cash deposits of their dealers. As the industry became more complex, the producer-dealer relationship became even more important, though the financing of new-car inventories has been taken over by others.

The franchise which now ties the dealer to the manufacturer is a peculiarly one-sided document. In return for the right to sell one make of car, the dealer agrees to handle only the one make (or some combination of one manufacturer's makes), to meet minimum financial requirements, to maintain specified showroom service and parts facilities, and to conform to standardized accounting procedures. The franchise may be canceled by the manufacturer for specified cause, or for "failure to represent the manufacturer." In 1953 the Supreme Court affirmed the right of the manufacturer to cancel a franchise with or without good faith.⁹ As early as 1933, a Federal circuit court declared that it could not protect parties from contracts which they have made.¹⁰ Thus there seems to be no legal relief for the one-sided nature of the agreement—and dealers seem to be willing to enter such agreements. In fact, the manufacturers' claims that cancellation is necessary to protect the public against sharp dealer practices is probably not without merit (assuming continuance of the present dealer franchise system).

The dealers also complain of various forcing practices of the manufacturers. The two complaints are related, for cancellation may in fact be based upon failure to accept required volumes of cars and/or genuine parts. Producers have been legally barred from forcing the use by dealers of specified finance companies.¹¹ However, there is nothing to stop the forcing of automobile quotas upon dealers. In practice there is consultation and considerable mutual agreement on sales quotas. Yet, when the selling becomes difficult, one hears frequent complaints by dealers, and there is evidence that they are selling more than they would voluntarily choose to sell. The practice of bootlegging is one kind of evidence of this.

The forcing of accessories, on which both the manufacturer and the dealer make higher margins than on autos, is another practice that does not lend itself to regulation.¹² It is a matter of the use of salesmanship by factory representatives and by dealers. The dealer is satisfied with his margin when he can sell accessories, and accessories are relatively cheap sales devices when he can give them away to secure automobile sales.

⁸ Kaiser-Frazer: Rongest We Ever Tackled, *Fortune*, July 1951.

⁹ *Revier Motor Car Co. v. Chrysler Corp.*, *Automotive News*, June 15, 1953, p. 21.

¹⁰ *Ford Motor Co. v. Kirkmeyer Motor Co.* (65 F. 2d 1001, 1006 (1933)).

¹¹ *General Motors Corp. et al. v. FTC* (114 F. 2d 33 (2d Cir. 1940)); *U. S. v. General Motors Corp.* (121 F. 2d 376 (7th Cir., 1941); *ibid.*, 314 U. S. 618 (1941); *ibid.*, Civil 2177 (N. D. 111: E. Div., 1952)).

¹² The average buyer took \$280 worth of accessories in early 1953, see *Fortune*, September 1953, p. 222.

The forcing of genuine parts is a more delicate matter, involving arrangements for exclusive dealing which may injure other manufacturers of parts. Prewar dealer franchises sometimes required the exclusive use of factory-handled or factory-authorized parts.¹³ In July 1953, the Commission issued a cease-and-desist order against the exclusive dealing arrangements made by the A. C. Division of General Motors and Champion Spark Plug Co. with their outlets for spark plugs.¹⁴ The rule against exclusive dealing had been established in a 1939 order enjoining General Motor's A. C. Division from exclusive dealing in spark plugs and oil filters.¹⁵ Recent dealer franchises tend to be silent on the question of exclusive dealing.

"Obviously all vehicle manufacturers stress the stocking of genuine parts but it is believed that less and less reliance is placed on the franchise provision and more reliance is placed on the manufacturer's selling force to obtain dealer cooperation. The following provisions of one vehicle manufacturer-car-dealer franchise are illustrative:

"1. No specific dollar amount of inventory was mentioned in the franchise but the dealer agrees to stock genuine parts to whatever extent is necessary to service adequately his zone of influence. In executing this policy the dealer is expected to work with the manufacturer's representative and an agreement is to be reached as to what is an appropriate level of inventory.

* * * * *

"2. The dealer also agreed to use genuine parts in his repair work. At the same time, there was no stipulation against purchasing parts from sources other than the vehicle manufacturer."¹⁶

There is a long history of misunderstandings, but it is clear that the dealers as a group are of vital importance to a manufacturer, though any one dealer may be considered dispensable. In recent years, according to management sources, the dealers have gained more power, and often participate in the formulation of general dealer policy.¹⁷

(4) *Adequate financial resources.*—This is not a requirement peculiar to the automobile industry. However, the contrast between the shoe string operations of early producers and the enormous financial requirements of today's firms is striking. Assembly plants of efficient size are costly, and they are becoming more costly. With or without vertical integration, inventory requirements are great, in spite of the fact that dealers still pay cash to manufacturers for cars. Development and promotion costs have become larger than for most other industries. Last, but not the least, is the occasional necessity of surviving bad years, caused by an unsuccessful model or by depressed business conditions.

The history of the Kaiser Motor Co. illustrates this great need for funds. The other Kaiser enterprises, a war-surplus plant, RFC funds, a \$53½ million stock issue, and bank loans all contributed to this undertaking.¹⁸ Yet, lack of funds may have been a handicap, and few others could be expected to come so close to success. It may turn out that Chrysler Corp.'s entry in 1923 is the last successful one.¹⁹

(5) *A combination of vertical integration and reliance on outside suppliers.*—The early producers designed a car, rented factory space, set up a production line, and placed orders for the components to be assembled. This is roughly descriptive of the Ford Motor Co.'s beginning in 1903, and also of the Kaiser Motor Co.'s start in 1946. Yet all of the producers found that some vertical integration was essential. Various reasons might be given: (a) a new process or part can be developed, (b) the techniques of mass production can be applied to a part or a subassembly, (c) parts suppliers should be disciplined or given more vigorous price competition, (d) excess or complementary plant capacity can be utilized profitably, (e) retained earnings can be invested profitably in parts making, (f) greater diversity of product provides some security against fluctuations in auto-

¹³ Federal Trade Commission, Report on the Motor Vehicle Industry, H. Doc. No. 468, 1940, p. 134.

¹⁴ New York Times, July 28, 1953, p. 34, Automotive News, July 27, 1953, pp. 1, 41.

¹⁵ New York Times, September 12, 1939, p. 35.

¹⁶ Charles N. Davison, op. cit., p. 701. Genuine parts are described as those handled by the car division in its dealer program. Some of these are manufactured by the vehicle assembler—others are purchased—all are genuine parts.

¹⁷ For a description of postwar dealer participation in General Motors policies, see Peter Drucker, Concept of the Corporation, New York, John Day Co., 1946.

¹⁸ Kaiser-Frazer, Fortune, July 1951.

¹⁹ Harold G. Vatter, Small Enterprise and Oligopoly, Corvallis, Oregon State College Press, 1955, p. 77.

mobile demand, and (g) no single source of supply should be relied upon. Whatever the reason or combination of reasons, each firm seems to find some vertical integration necessary. The resulting ability to apply its own research and production techniques to parts production, and thus to keep suppliers' costs and prices in line, may be sufficient reason.

Vertical integration is seldom complete for any one part or subassembly. It is certainly not carried far into the production of materials and supplies. The vertical integration of parts production may be described as tapered. There are good reasons for this, in addition to the disciplinary reason and reluctance to rely upon one source.²⁰ Since automobile sales vary considerably from year to year, and from season to season, occasional idle capacity cannot be avoided. Tapering shifts a large part of it to the outside suppliers.

While one may conclude that no firm could survive without enjoying some of the advantages of partial integration, the extent to which it has been accomplished varies widely within the industry. Professor Davisson has constructed a convenient measure of relative degrees of vertical integration. He uses the ratio; amounts paid to suppliers/amounts paid to employees.²¹ While this is not a meaningful absolute measure (the ratios of value added to materials purchased vary widely between different products in industry generally), it is a useful comparison between firms whose product structures are similar. Three annual comparisons of five firms are shown in table 1.

TABLE 1.—Comparison of degrees of vertical integration of 5 automobile firms, 1949, 1950, and 1951

Firm	Ratios of amounts paid to suppliers/amounts paid to employees			
	1949	1950	1951	3-year average
General Motors.....	1.92	1.82	1.86	1.87
Chrysler Corp.....	3.83	3.47	3.64	3.65
Studebaker Corp.....	2.99	2.79	3.27	3.02
Packard Motor Car Co.....	4.18	3.82	3.13	3.71
Nash-Kelvinator Corp.....	2.57	2.71	2.77	2.68

Source: Charles N. Davisson, *The Marketing of Automobile Parts*, Ann Arbor, Bureau of Business Research, University of Michigan, 1954, pp. 706, 707.

The Ford Motor Co.'s degree of integration cannot be measured, but it is estimated to be below General Motors and above all other producers.

(6) *Frequent model changes without offense to public tastes.*—The most economical production is the continuous output of a fixed model. This has not been possible since 1925. Two types of compromise must be made between conservatism and radical style changes. First, major changes are undertaken only every 3 years or so. (The cycle of major style changes seems to be growing shorter.) Intervening years are marked by inexpensive decorative changes and expensive publicity about new models.

The second compromise is made between the market's insistence on change and its essential conservatism. Styling and design are delicate arts; the 1934 Chrysler and DeSoto Airflows failed, while the 1947 Studebaker succeeded. It is interesting that although the Chrysler products of the early 1950's were designed for rational consumer preferences, they failed to appeal. A distinction must be drawn between engineering and styling. Fine engineering cannot be seen; it must be attractively packaged.

The small firms must be more skillful than the large firms, for several reasons. First, total design and tooling costs are not proportional to volume. Second, since small firms appeal to minority tastes, they must have special features. Third, being in the minority, their models are out of line if radically different.

Tooling and parts costs may be higher for small producers than for large producers. If forced to follow rather than lead, orders may have to be placed

²⁰ The fire which destroyed the G. M. Hydra-Matic plant, in Livonia, Mich., August 12, 1953, illustrated the wisdom of this last principle. Lincoln, Nash, Hudson, and Kaiser autos used the transmission. Other G. M. transmissions were used temporarily, and space was leased and later purchased from Kaiser. All of this illustrates the complex interdependence which results from partial vertical integration.

²¹ Charles N. Davisson, *op. cit.*, p. 706.

later—thus more overtime labor may be used by suppliers. Small orders are generally more expensive to supply than large orders, regardless of the time element.

(7) *A satisfactory used-car market.*—The concentrated structure of the industry may be due in large part to the behavior of the used-car market. One of the greatest dangers to a producer is a rapid decline in the resale values of its products. This was one of the Chrysler Corp.'s difficulties through 1954.²² Small producers generally suffer this disadvantage. New producers and those rumored to be on the way out are especially troubled by it. The Kaiser Motor Co. did not overcome its newness in this respect before doubts concerning its life hastened the decline in its sales.

It appears to be rational for used-car buyers to fear the products of new or rapidly declining firms, for service facilities are important. It is not quite so clear why used-car buyers discount the products of the sounder small firms as much as they do. A part of the explanation is that their new models may be somewhat overpriced for their characteristics, and this is merely squeezed out on the first trade. Some deficiencies in servicing facilities may be encountered, but this is not serious for most of them. The theory that Big Three dealers deliberately depress the trade-in values of independent makes is not sound. The self-interest of a dealer would prevent him from pushing this beyond a point justified by the realities of the market. Used-car dealers report that the independent makes go cheaply at auctions—the auction buyers cannot be imagined to be acting in concert to depress the prices of these makes. The answer must be that an independent make has a smaller potential market, hence a slower turnover, either for a used-car dealer or for an owner. Thus success breeds success in the automobile industry, and a firm does not dare to become too small, lest it be criticized by the used-car market for simply being too small.

An outline of the history of the industry

We may better understand the existing pattern of the industry, if we briefly review its history. This history may be conveniently divided into five stages, each of which has its peculiar significance for the growth of the certain characteristics of the industry.

(1) *Experiment with gasoline-powered vehicles, 1865–98.*—Siegfried Marcus built a gasoline-powered vehicle in Vienna in 1865.²³ He considered it to be of no practical importance. German, French, and American mechanic-inventors made important advances during the following 35 years, but the product remained an experimental one.

The American pioneers—the Duryea brothers, Ford, King, Olds, Winton, and others—were interested in the practical usefulness of their vehicles. There were many difficulties—the products needed a lot of improvement, the public was suspicious of them, and there were virtually no adequate roads. Vehicles were manufactured on very small scale; often on order. Prior to 1899, commercial production can hardly be said to have existed in the United States. Experiment and development prepared the way for commercial production at the turn of the century.

(2) *1899 through 1910—Small firms producing for a limited market.*—Twenty-five hundred vehicles were produced in 1899; 187,000 were produced in 1910. Many small firms were able to enter this market, because of the small capital requirements and the growing demand. More than 1,000 firms are reported to have been formed to produce automobiles between 1895 and 1926. Most of these were paper firms, stock promotion schemes, or serious but stillborn efforts. Epstein's figure—total of 181 firms in commercial production between 1903 and 1926—is probably accurate.²⁴ Failure of a single model—and most of them were experimental—could easily ruin such a firm. The Olds Motor Works was one of the largest firms, selling 25 percent of the market in 1903. Yet when Durant secured it for General Motors in 1908, it was declining.

In spite of the freedom of entry and the small sizes of the firms, the competition should be described, in Chamberlinian terminology, as "monopolistic competition." The firm's products were always differentiated, and sold as special products designed for special tastes and purses. Vigorous selling efforts were typical from the beginning of the industry. At this early stage, it was discovered that a vigor-

²² Five of its models (not 5 makes) were among the lowest 24 of 48 models in retention of resale value. See Consumer Reports, May 1953, p. 191; corrected in July 1953, p. 301.

²³ P. S. deBeaumont, Siegfried Marcus, Forgotten Pioneer, The Antique Automobile, 2d quarter, 1947, p. 73.

²⁴ Ralph C. Epstein, The Automobile Industry, New York, A. W. Shaw, 1928, p. 164.

ous dealer organization was essential for the survival of a firm. The importance of dealers has not declined. Indeed, the strength of the dealer organization is now a crucial factor in the survival of any firm, no matter how large. The somewhat sensitive nature of dealer-manufacturer relations is due to the special needs of the manufacturer.

An attempt at monopoly control by the Association of Licensed Automobile Manufacturers ended in victory for the Ford Motor Co. in January 1911.²² The unhappy spectacle of the Selden patent group trying to extract tribute from this infant industry had two major effects.

First, the industry and the public learned to regard the business as one that should be free from monopoly controls. Ford, especially, was delighted with his role, and continued to be an uncooperative spirit in the industry—even avoiding the Automobile Manufacturers' Association, one of the successors of the A. L. A. M. Ford's attitude intensified the vigor of the competition in the industry, especially under the stress of the 1930's. Today the absence of the Ford Motor Co. from the A. M. A. is one of the important checks on the power of this trade association.

Second, the Society of Automotive Engineers, the other successor of the A. L. A. M., has contributed vastly to technological advance of the industry, and to a type of cooperation which has had no discernible monopolizing effects. The celebrated patent pooling of the A. M. A. has been another such activity, but its importance has declined since 1930.

Two of the giants were created in this period. Each contained two ideas which were to be essential for the growth of a successful firm. In 1909, Ford announced his model T; a car frozen in design, to be produced on a moving assembly line in such large quantities and for such a low price that the other 95 percent of the market could be tapped. The success of this principle was so marked that the transportation habits and living habits of the Nation were transformed. The highly standardized nature of the product had to be changed later, but the principles of standardizing the parts and the process, and the necessity of selling in the large volume segment of the market are by now well established. The other significant idea developed by Ford was the partial vertical integration of the process on an opportunistic basis. Various reasons might be found—to discipline parts makers, to show them how to do it, to use idle plant or personnel—all with the central purpose of cheapening the total process.

Durant's principal objectives in forming General Motors seem to have been diversity of product line and greater financial backing than could be provided by producers out of their retained earnings. (Ford was so successful in this latter respect that he avoided banking connections—though only by drastic means, in one instance.) Durant succeeded in acquiring a line of successful automobiles covering the entire price range, though with considerable waste, for more cars were discontinued than were retained. He gained the financial support, first of bankers, then of industrialists, though at considerable cost to his personal career.

It is hard to say what his objectives might have been, beyond the achievement of these two general goals. He used the holding company device, as did many of the trusts of the period. He bought more than 20 automobile and accessory firms by the end of 1909. He might have bought Ford, Reo, and Maxwell-Briscoe, but was unable to raise sufficient cash. Whether his aims went beyond stability to monopoly cannot be determined. Mr. A. B. C. Hardy quoted Durant: "I was for getting very kind of car in sight, playing safe all along the line."²³ He did not say "every car," but "every kind of car." Mr. Hardy interpreted this to mean variety, not exclusive control. In any case, the need for funds in 1910 caused him to lose control to a banking syndicate under terms that were extremely favorable to the latter.

(3) *1911 through 1922: The growth of Ford, General Motors, and many independents producing for a mass market.*—In the next 12 years, total industry production grew from 187,000 to 2,656,000 vehicles per year. The Ford Co.'s model T blanketed the low-price end of the market, accounting for a peak of 55.45 percent of total sales in 1921. The Ford plants continued the development of the mass production process, completing the moving-belt production line in 1914. The high-wage, high-output principle was further emphasized by the announcement of the \$5 day.

The rapid growth of demand permitted the easy establishment and growth of new firms. The total number of producers reached a maximum of 88 in

²² 184 Fed. 893-916.

²³ Lawrence Seltzer, *A Financial History of the Automobile Industry*, Boston, New York, Houghton Mifflin, 1928, p. 157.

1921. Durant was still active in the industry. He backed Louis Chevrolet's development of a new, light automobile to compete with the Ford. The Chevrolet and the Little, both produced by Durant firms, were moderately successful. In 1915 Durant established the Chevrolet Motor Company of Delaware—a holding company. It first acquired all of the stock of the existing Chevrolet Motor Cos. Then, with funds supplied partly by the Du Ponts, it acquired a majority of the outstanding common stock of the General Motors Corporation of New Jersey.²⁷

Unable to persuade General Motors directors to admit the Chevrolet Co., Durant voted Chevrolet's General Motors stock, and secured control. He became president somewhat reluctantly when Charles Nash resigned, and Pierre S. du Pont became chairman of the board. General Motors Corporation of Delaware was organized—at first a holding company—to right the pyramid. Most of the subsidiaries were then dissolved, becoming operating divisions of General Motors. Under the leadership of Pierre du Pont and Alfred P. Sloan, this was developed into the famous decentralized management plan, whereby a maximum of divisional autonomy in operation was combined with central coordination of finance, research, accounting, and inventory control.

The Du Pont interest in General Motors was increased by further purchase of stock, so that by 1920 it amounted to 23.96 percent of the outstanding stock.²⁸ The Du Pont interest has remained at approximately 23 percent since that time. Seltzer notes that, in 1923, the Du Ponts were called upon to sell the General Motors stock they had purchased from Durant, so that it could be resold to General Motors executives. Instead, they sold stock in their subsidiary, General Motors Securities, thus retaining undiminished control of General Motors Corp.²⁹ He wrote, in 1926: "Control of the General Motors Corp. is possessed by E. I. du Pont de Nemours & Co. and its affiliated interests."³⁰

Neither the purpose nor the extent of this control is entirely clear, however. John J. Raskob, a Du Pont executive, once wrote this: "Our interest in the General Motors Cos. will undoubtedly secure for us the entire Fabrikoid, Pyralin, paint and varnish business of those companies, which is a substantial factor."³¹ Arthur Pound placed this motive in a broader context.³² E. I. du Pont de Nemours, being primarily a producer of explosives at that time, was periodically faced with excess capacity and large accumulations of earnings, both being the results of having just supplied someone's war needs. In 1915 it was clear that it would again be in such a position within a few years. A growing peacetime industry might provide a profitable investment for funds, and a market for their expanded productive capacity. Accordingly, they entered the automobile business.

Durant had needs that such a group might supply. He wanted to get on with the job of building a sound automotive giant. He needed money and power, and relief from the strictures of banker control. He needed the confidence of the banking community, however, which he feared he did not have. As a result of this combination, with the Du Ponts firmly in command of finances, banker and public confidence in General Motors rose. "Their presence insured that stability would have a strong voice at the council table."³³ The Du Ponts, in turn, were assured the power to protect their investment and had the privilege of developing this market for their products.

A serious financial misadventure resulted in Durant's ouster. Development of the corporation along the general lines laid out by Durant and the Du Ponts continued after his departure, however.

E. I. du Pont de Nemours and its subsidiaries sold increasing quantities of their products to the growing firm. Several features of the organization of General Motors operated against their securing exclusive privileges with the General Motors divisions, however. First, since much of the horizontal and vertical integration had been achieved by the acquisitions of firms and their personnel, considerable influence continued to be exerted by former owners of the subsidiaries. Second, the principle of decentralized management gave autonomy and responsibility for costs and quality to division managers. Both of these factors resulted in resistance to total penetration by Du Pont salesmen.

²⁷ *U. S. v. E. I. du Pont de Nemours & Co., et al.* (126 F. Supp. 235 (1954), p. 240).

²⁸ *Ibid.*, p. 240.

²⁹ Seltzer, *op. cit.*, p. 142.

³⁰ *Ibid.*, p. 142.

³¹ 126 F. Supp. 241 (1954).

³² Arthur Pound, *The Turning Wheel*, New York, Doubleday Doran, 1934, pp. 160-166.

³³ *Ibid.*, p. 161.

Third, a management principle was developed which advised against reliance upon a single source of supply for any product. Fourth, the principle of competitive procurement of parts and supplies tended to force the Du Pont enterprises to bid low if they were to retain their markets.

Thus, though General Motors was Du Pont's largest customer between 1939 and 1949, only two-thirds of its finishing materials came from Du Pont.³⁴ In 1949, the purchases of tires from United States Rubber Co. by General Motors divisions varied from 50 to 64 percent of the various divisions' needs.³⁵ These are, of course, highly satisfactory sales records.

(4) *1923 through 1941: The Big Three and a few independents competing for a replacement market.*—The rate of growth of the industry declined rapidly after 1923. In that year, the third of the members of the Big Three entered. It soon acquired the characteristics necessary for success. Chrysler Corp. engineers developed the Chrysler car—ideally suited to the replacement market. The acquisition of Dodge and the creation of Plymouth and DeSoto completed the price line.

The attrition of numbers in the industry began after 1921; it was as marked in the 1920's as it was to be in the depressed 1930's. The dominating fact was the presence of from 10 million to 30 million automobiles in use. Even Ford was forced to produce style, comfort, and performance for this market. By the 1930's, the final ingredient of success was apparent. The public must not only be attracted by the new model, but must support it in the used-car market.

The intense rivalry between the Big Three blanketed the market to the extent that entry was virtually closed, and the exit of a small firm exceedingly easy. There is no evidence of any overt actions on the parts of existing firms to prevent entry or to hasten exit. Professor Vatter puts it this way:

"Furthermore, the emergence of such immobility appears entirely possible in the absence of any significant collusive, deliberate, or artificial barriers to entry; the barriers are immanent in the very structure and modus operandi of markets characterized by fewness, together with heavy fixed equipment, plateaus in the secular trend of demand, technical complexity of the product, plant and product diversification, extensive marketing and/or servicing facilities, product diversification, and, in the case of the auto industry, retooling for major body changeovers."³⁶

(5) *1946 through 1954: The satisfaction of the deferred demand and another leveling off.*—Entry appeared temptingly open in the postwar sellers' market. By the end of this period, however, changes of major significance had occurred. Two of the Big Three had exchanged relative positions, and these two had been induced to reorganize their internal structures. Six independents had merged to form three, whose product structures were rationalized, and whose managements were reorganized. One of the three, containing the new entrant, had shrunk to an insignificant factor in the market. All remaining firms were affected by the introduction of major innovations in production techniques and by innovations in their wage contracts. Mr. Henry Ford II indicated the extent of the changes in his firm: "He estimated that 95 percent of Ford's facilities are either new or have been modernized since the beginning of 1946."³⁷

(6) *1955: A period of intense rivalry and growth.*—It is likely that a fairly rapid increase in total sales will occur so long as the total economy enjoys prosperity. This will be a result of the rivalry between the remaining firms, who must continue to operate on the assumption that the structure of the industry is not static. Intensive selling efforts of the type observed in 1955 will be employed. The objective of all but one of the producers is the achievement and maintenance of sufficient size to warrant some feeling of comfort. The objective of the largest firm must be to at least retain its relative size, for the mores of the industry regard relative decline as evidence of failure. The contest is more difficult for the smaller firms, for they operate closer to the margin where small declines become rapid declines. Also, since all of the seven conditions for the survival of a firm are varieties of economies of scale, the small firms must use sharper pencils, be content with lower rates of profit, or both.

³⁴ 126 F. Supp. 235 (1954), p. 295.

³⁵ *U. S. v. E. I. du Pont de Nemours et al.*, plaintiff pretrial brief, p. 143.

³⁶ Harold G. Vatter, op. cit., pp. 79-80.

³⁷ Wall Street Journal (Chicago), November 2, 1955, p. 2.

SOME IMPLICATIONS OF THE STRUCTURE OF THE INDUSTRY

(1) *Relative profit margins and economies of scale.*—Cost figures are not available in sufficient detail to provide a test of the hypothesis that the survival conditions add up to significant economies of scale. Crude verification is provided by relative rates of profit in the industry, however. Figure 2 shows relative profits as percents of stockholders' investments. Figure 3 shows relative profits as percents of sales.

TABLE 2.—*Net profit as percent of stockholders' investment*

Firm	1927-37 average before Federal and State income taxes	1947-50 average		1951-52 average	
		Before income and excess-profits taxes	After income and excess-profits taxes	Before income and excess-profits taxes	After income and excess-profits taxes
General Motors.....	25.98	52.32	27.64	56.17	20.25
Chrysler Corp.....	29.04	42.02	24.19	37.11	14.09
Ford Motor Co.....	— .09	(1)	(1)	(1)	(1)
Hudson Motor Car.....	8.06	28.77	16.96	8.80	4.65
Nash-Kelvinator.....	18.90	46.92	26.33	24.13	11.86
Packard Motor Car.....	16.53	16.06	11.47	15.07	7.26
Studebaker Corp.....	4.43	43.50	25.99	23.81	12.32

¹ Not available.

Sources: Federal Trade Commission, Report on the Motor Vehicle Industry, 1939; Moody's Manual: Industrials.

TABLE 3.—*Net earnings as percent of net sales*

Firm	Before taxes ¹				After taxes ¹			
	1947	1949	1951	1953	1947	1949	1951	1953
General Motors Corp.....	14.5	19.7	19.8	16.5	7.5	11.5	6.8	6.0
Chrysler Corp.....	8.7	10.2	5.9	6.0	4.9	6.3	2.8	2.2
Studebaker Corp.....	5.6	9.4	4.5	.9	3.4	5.8	2.5	.5
American Motors.....	12.6	12.4	8.0	6.5	7.2	7.2	4.0	2.9
Packard Motor Car.....	0	6.3	6.2	3.7	2.8	3.6	3.1	1.7
Kaiser Motors Corp.*.....	—	—	—	—	7.3	-2.9	-8.4	-7.5

¹ Federal, foreign, and State income taxes, and Federal excess-profits taxes.

* No net payment of Federal income or excess-profits taxes. Net refunds in 1947 and 1949 included.

Source: Moody's Manual: Industrials.

Both measures show an unmistakable tendency for profit margins and earnings on investments to vary directly with size. It is not an invariant relation; differences in efficiency do exist for reasons other than size. Also, short-run changes in the sales of a firm of given size have great effects on profits.

There is still another defect to the use of profit as a measure of efficiency. We may grant that the products are sold in sufficiently competitive markets so that prices are accurate reflections of quality. Still, costs may be low for more than one reason. One reason is a legitimate economy in the use of resources. Another reason is that the resources may be purchased cheaply, not because of the economy of large quantity purchasing, but because of the use of superior bargaining power. The labor resource is purchased in a market that is open; and on roughly the same terms for all manufacturers.* Parts and supplies, however, may be subject to unequal bargaining in the industry. This possibility will be discussed below.

If the economies of scale are as pronounced as crude measures indicate, this appears at first to be a classic case where monopoly is to be expected. If economies of scale continue to accrue to the largest firm as it grows, then it will continue to grow at the expense of all smaller firms. Fortunately, this is not quite the classic case, which assumes that the product of the largest firm will

* The terms are not always the same for the smaller parts suppliers, nor were they quite the same for the Kaiser Motor Co.

satisfy all segments of the demand. This is not true of automobiles. Professor Epstein's conclusion still holds:

"Automobiles, however, are distinctly specialty products. Thus monopoly, in the sense of an all-exclusive control of the market, is almost unthinkable."³⁹

The danger is that, since entry is virtually closed, a serious error by a small firm would be irremediable; the number of survivors could be reduced by one for each such error.

(2) *Monopoly Power: Parts and Supplies.*—A firm whose power dominates a market in which it buys may enjoy more than the normal economies of large size. It may enjoy a specious sort of economy if its bargaining for a certain automotive part forces the price below the cost of producing the part, although all possible economies have been employed. The powerful buyer is not necessarily aware that he is doing this—for the part supplier will find it profitable to take any order, so long as the price covers the direct costs, rather than to lose an important customer and have idle capacity. The abnormally low price will allow him to get by in the short run, but it will not permit his survival in the long run, for it does not cover his indirect costs, nor pay a return on his capital. He will fail, or turn to some other field, unless he can recover his losses by charging higher prices to other automobile manufacturers for the same part, or to customers who buy his other products. No matter which of the three eventualities occurs, someone is paying a price so that the large firm may appear efficient.

Fortunately, there are certain checks upon this power, too. The partially integrated firm would find it a poor long-range policy to destroy many of its sources of supply. Since automobile firms buy from each other, they must check the legitimacy of each other's buying and selling prices. Since further integration is open to any firm, it need not pay someone else's costs for long. So long as several automotive and other outlets exist, the supplier has some choices.

(3) *Monopoly Power: Parts in the "After-Market."*—No matter what their degree of vertical integration, producers tend to market "genuine" parts through their dealers and through franchised parts distributors. There are advantages to the public in this arrangement. The number of parts is large, and this is an efficient way to distribute them, and to guarantee to customers the kind of quality which the auto assembler feels they should get. However, since both dealer and parts distributor are urged to handle only "genuine" parts, the parts manufacturer who does not sell through the automobile manufacturer has considerable difficulty in this part of the market.

According to Davisson, auto manufacturers use the dealers and other franchised parts distributors as competing outlets for "genuine" parts. Though they compete with each other, the combined actions of these two outlets result in strengthening the position of "genuine" parts versus "nongenuine" parts (those not sold by the automobile manufacturer).⁴⁰ Davisson points out that the position of any particular auto producer in the marketing of repair parts depends upon—

- (1) the size of the assembler and the extent to which it is engaged in manufacturing parts for its own and other makes.
- (2) the number of its makes in the car population.
- (3) the size and caliber of its dealer organization.
- (4) the trade acceptance for its original equipment.
- (5) the variety and strength of rival after-market channels.⁴¹

Of course, there are many rival after-market channels; notably automotive chains and mail-order houses. Nondealer repair shops are free to buy from any sources. The car owner, however, may lean to insist upon "genuine" parts to protect himself against bad quality. Actually, if all parts manufacturers who meet the specifications for "genuine" parts could sell freely to the dealers and distributors, using the "genuine" label, then they would not be harmed. Actually that is seldom the case.

(4) *The dealers.*—The one-sided nature of dealer franchises has been discussed. There are many features of these arrangements which protect the public against the local monopoly power which dealers might exercise. Also, since the manufacturer is always interested in volume sales and in the reputation of his product, including its servicing, he needs considerable power over dealer policies.

³⁹ Ralph C. Epstein, op. cit., p. 222.

⁴⁰ Charles N. Davisson, op. cit., p. 739.

⁴¹ Ibid., p. 742.

Much of the price competition which is the indication of vigorous rivalry in the industry is achieved by the dealers. This may be sound; the high volume, low margin principle may be applied to distribution as well as to manufacture. However, the effects of disparity in the sizes of manufacturers are reinforced by differences in their dealers' volumes. Small manufacturers can do much less in the way of "forcing" or controlling dealer policies, for their potential volumes are generally smaller. Unless he is treated "better" in many respects, the dealer may be tempted to switch to a big three make. Thus an important competitive practice (the dealer's price cutting) is strictly rationed to the small manufacturer.

One might ask whether the dealers should be forced to bear all of the burden of price flexibility, since it is the manufacturer who insists on expanding the total volume of sales. Actually, the dealers do not bear all of it, for they are rewarded by bonuses, special prices, etc., if their sales exceed certain volumes. A bonus system may be psychologically superior to a stright price reduction in motivating dealers, just as high trade-in allowances may be superior to price cuts in attracting consumers. Yet the failure of manufacturers to reduce their prices across the board means that they are preserving their margins; only giving up enough of them, in the form of bonuses, at their discretion, to motivate dealers.

Senator O'MAHONEY. I would like to ask a few questions, Professor Moore.

If you will return to page 6 of your statement, the last paragraph of that page seems to describe in summary fashion the relationship between the manufacturer and the dealer. You speak of the "franchise which now ties the dealer to the manufacturer is a peculiarly one-sided document."

You mean "one sided" on behalf of the manufacturer or on the part of the dealer?

Mr. MOORE. I mean that the dealer—one often agrees to do a lot of things in return for the simple privilege of selling the product of the manufacturer, and that the manufacturer may not specifically agree to do very many things.

Senator O'MAHONEY. The next sentence:

In return for the right to sell one make of car, the dealer agrees to handle only the one make (or some combination of one manufacturer's makes).

In other words, the dealer absolutely binds himself to be the dealer only for the specific manufacturer.

Mr. MOORE. That is correct.

Senator O'MAHONEY. He may not sell any other car even though he may be a dealer in a small community with small population where the citizens who have the purchasing power might wish to buy some other car. He can't sell it.

Mr. MOORE. There are a number of variations in this. There are a few joint dealers, but this again depends upon contract. It is not a right that a dealer normally possesses.

Senator O'MAHONEY. Then you say—
to meet minimum financial requirements.

By that what do you mean?

Mr. MOORE. The amount of capital that he must raise and the form of the financial organization.

Senator O'MAHONEY. In other words, by this contract the dealer is required to produce the financial basis of the operation locally?

Mr. MOORE. That is correct.

Senator O'MAHONEY (reading):

To maintain specified showroom service and parts facilities.

What does that mean?

Mr. MOORE. That means that it may be stated in terms of floor space, it may be stated in terms of capacity for the number of cars he can service, the type of parts department that he maintains, the type of servicing facilities that he maintains, all of those may be agreed upon in the franchise.

Senator O'MAHONEY. Then you say—

and to conform to standardized accounting procedures.

Mr. MOORE. Yes. As a matter of fact, the form for his accounting records may be specified by the manufacturer.

Senator O'MAHONEY. You say "may be." Are they?

Mr. MOORE. They are in fact in many cases.

Senator O'MAHONEY. Is it the general rule?

Mr. MOORE. It varies from one manufacturer to another. I would not say it is a general rule.

Senator O'MAHONEY. Do you mean for us to understand that the manufacturer sets the standard, whatever it may be?

Mr. MOORE. In many cases he does set the standard.

Senator O'MAHONEY. Then do you mean that in some cases the dealer may have his own accounting practice?

Mr. MOORE. He may have his own accounting practices, and if those meet the approval of the manufacturer, those may be his accounting practices.

Senator O'MAHONEY. In other words, then, the accounting practices of the dealer must be approved by the manufacturer. Whatever they are, whether he devises them or the manufacturer, that is so. And then you say:

The franchise may be canceled by the manufacturer for specified cause, or for "failure to represent the manufacturer."

That means, does it not, that it is wholly within the hands of the manufacturer to cancel for his own reasons?

Mr. MOORE. This seems to be correct, Senator, and this seems to be supported by the courts, that this is the privilege of the manufacturer.

Senator O'MAHONEY. But there is no question about that?

Mr. MOORE. There seems to be no question.

Senator O'MAHONEY. The dealer who accepts such a contract knowingly subjects himself to cancellation for any cause that the manufacturer may choose.

Mr. MOORE. That seems to be correct.

Senator O'MAHONEY. Then would it be right to summarize this further by saying that in return for the privilege of selling one make of car or one combination of one manufacturer, the dealer under these contracts must have the financial strength, the capital strength which the manufacturer requires. He must raise that himself. He must build or rent or own showrooms to the satisfaction of the manufacturer?

Mr. MOORE. That is correct.

Senator O'MAHONEY. And he must provide himself, I suppose, through purchase service and parts facilities which the manufacturer imposes?

Mr. MOORE. That is correct.

Senator O'MAHONEY. And then the accounting procedures which we have already analyzed.

Is there any provision in the contract with respect to the number of cars to be sold?

Mr. MOORE. Generally not. I would say that at the present time I would doubt very much whether he would find such provision in the franchise.

Senator O'MAHONEY. Is there any freedom on the part of the dealer to say how many cars he will sell?

Mr. MOORE. That amount of freedom possessed by the dealer varies widely, depending upon the relative power of the dealer in bargaining with the manufacturer.

Senator O'MAHONEY. I am talking about a contract. What power of bargaining does he have?

Mr. MOORE. Generally I think the contract does not specify that he shall take a certain number of cars. That tends to come under the heading of representing the manufacturer.

Senator O'MAHONEY. Well, then, if it comes under the heading of representing the manufacturer, then I ask you to give us your interpretation of the quoted phrase which you used—it is not yours, you quoted it from somewhere: "Failure to represent the manufacturer."

Mr. MOORE. This is purposely varied greatly. It can mean almost anything according to the studies made by the Federal Trade Commission and published in the 1940 report of the automotive industry.

"Failure to represent the manufacturer" can mean virtually anything you could imagine. Failure to sell sufficient automobiles, failure to follow the practices, business practices, perhaps some that were not specified, business practices that were approved as good practices for dealers. It has been used and these cases have been decided, presumably the practices have been stopped by court cases; failure to use the finance company designated by the manufacturer as the one to be used to finance sales, such things.

Senator O'MAHONEY. Then the phrase I used in my original statement announcing these hearings, the word "vassal," correctly describes the dealer. He is a vassal of the manufacturer.

Mr. MOORE. In many senses he is.

Senator O'MAHONEY. Now, on page 9, this I think is already clear in the second paragraph, "Adequate financial resources." You say:

With or without vertical integration, inventory requirements are great, in spite of the fact that dealers still pay cash to manufacturers for cars.

Does that mean that so far as your search goes and your information goes, no dealer offers as part payment or full payment a note with a conditional sale provision of any kind to the manufacturer?

Mr. MOORE. This requires an interpretation of how one would define the manufacturer, how many divisions of the manufacturer's firm one would include.

If the manufacturer owns the finance company, then the finance company may actually finance the sale of the newly produced automobile for the dealer, provide the funds just as it does for the consumer who buys a car.

Many cars are owned by the dealer. The point is here that the title passes from the manufacturer to dealer as the car is delivered. The dealer is not an agent, he is not selling the manufacturer's product. He buys the product. He uses extensive credit, he makes an extensive use of the credit to finance his own inventories.

Senator O'MAHONEY. But the credit is not to the manufacturer, it is to the financing company to which he has resort for his capital?

Mr. MOORE. For his capital, or to the banks or to his own sources.

Senator O'MAHONEY. Whether that be a bank or a financing company or of the particular finance division of the manufacturer?

Mr. MOORE. That is correct. May I clarify, Senator, our conversation of a few moments ago, concerning the dealer's financial requirements in acquiring his own building, capital facilities for a dealership?

This may also be true, that he may do this on credit, and the credit may be supplied by the manufacturer in some cases on a loan basis or by the manufacturers, or some other finance company which may actually loan the money to the dealer to establish the facilities.

The point is again, it is the dealer who holds title to the building and equipment, and it is his obligation to finance it.

Senator O'MAHONEY. If the dealer gets his credit from a subsidiary or an affiliate of the manufacturer, his state of vassalage is only increased by the degree of that credit?

Mr. MOORE. He has 2 contracts with the manufacturer rather than 1.

Mr. McHUGH. Mr. Moore, doesn't the nature of the factory-dealer franchise system place the real burden of price competition upon the car dealer?

Mr. MOORE. It places almost all of the price competition on the dealer. That is modified to an extent which I am unable to determine, which I hope to try to determine sometime, by the practice of the manufacturer paying bonuses or other awards to dealers who sell large volumes of cars. This, in effect, is a price rebate or a price reduction to the dealer.

Mr. McHUGH. You say that this is the manner in which the manufacturer accepts or absorbs some of the burden of price competition?

Mr. MOORE. Of the price competition that the dealer engages in.

Mr. McHUGH. Wouldn't the consumer be better served by a straight-across-the-board price cut by the manufacturer rather than a system of bonuses?

Mr. MOORE. This is a very difficult question. In the first instance, that is, looking at it from the point of view of the consumer and his relation with the dealer who is selling him the car, the consumer would certainly be better off if he had more information about what this price was, how it was announced, if he could perhaps rely a little bit less upon bargaining and more upon announced policy of low prices.

On the other hand, there are many ramifications to that question. This implies that the manufacturers themselves would engage in the price competition that is so important in selling large volumes, as in 1955. The fact that there is such a small number of firms in the industry manufacturing cars and there is such a great difference in their sizes becomes important here.

If announced price reductions by the manufacturers developed into a major means of competition, a price war, I would begin to worry seriously about the so-called independents, about the small manufacturers who operate generally, not always, but operate quite often on smaller margins, in the first place, as indicated by this crude measure here, that a major price battle between three major producers in the industry I would fear as having bad effects on the smaller manufacturers.

So, my answer to that question is an ambiguous answer. It is a very difficult question.

Mr. McHUGH. You are saying that it might conceivably have the effect of passing on lower prices to the consumer.

Mr. MOORE. It would do that.

Mr. McHUGH. You indicated earlier that you believe manufacturer-car forcing was responsible primarily for the bootlegging problem. Do you believe that this practice of the manufacturer of forcing cars upon dealers represents, or is indicative of, a healthy, competitive behavior?

Mr. MOORE. In a sense, I think it is. My attitude toward that is rather mixed also.

I think that the accomplishments of the industry in reducing the manufacturing costs have been tremendous, an outstanding example of the application of mass production to a complex product.

I think that the distribution of that product, on the other hand, is a very expensive process, the cost of the dealers marketing the automobile, and the smaller volume the dealer sells, the more costly this is. With his fixed equipment, he must make a larger margin per car.

I will be very happy to see sales made in large volume, mass distribution applied to the industry a little bit more than it is, and this would mean lower margins for the dealers and price cuts for the consumers.

And I think that as the industry tries to increase its sales, no matter if the market is growing, I think we will see more and more of the mass distribution and low margins for the dealers. As a consumer of automobiles, I like the low prices that it implies.

Mr. McHUGH. Is this practice of forcing the cars upon dealers a practice in which all the manufacturers engage, or just the large manufacturers?

Mr. MOORE. Here one has to make a judgment, and I shall make a judgment. In my judgment, the small producers do much less of this, they must be more cautious about this, because the dealer franchise with their dealers is not nearly as worthwhile a document, not nearly as valuable a document. The total volume of cars they could sell, in any case, is much smaller.

The dealer for an independent producer has to be allowed a larger margin on his cars, and he will put up with much less forcing. As a matter of fact, he may find a Big Three dealership open in the city and switch, as many of them have, if he is forced too far. So I think just as a matter of logic, the small producers do much less of the forcing. The Federal Trade Commission found in its 1940 study that they were doing considerably less, although there were instances of it among small manufacturers.

Mr. McHUGH. Then you would say that the power which comes from the large size of the big manufacturer gives them a special advantage in forcing cars upon dealers?

Mr. MOORE. Absolutely.

Mr. McHUGH. In connection with the section of your paper dealing with purchasing power and parts, do you have any reason to believe that the size of the General Motors Corp. enables it to purchase cheaper than its competitors?

Mr. MOORE. I have every reason to believe so; yes.

Large orders by themselves are more economical to produce, and this is a legitimate reason, this is one of the economies of scale. It is important in the industry, and it is inevitable that the very large orders for purchasing can be produced at lower prices.

In addition to the general economy, there is the question of relative buying power, and where the power of the buyer is so much greater than the power of the seller, due to difference in their size, I would expect instances to occur in which the price were pushed lower for this powerful buyer, and the producer of parts, in order to make up for this, maybe charging someone else a slightly higher price, someone who has no power to push the price down.

Now, that may be almost anyone. The producer of parts may produce other parts, entirely different products, on which he has to make a higher margin. He may produce parts for the so-called after-market replacement parts. He may produce parts for a smaller manufacturer of automobiles.

Mr. McHUGH. Do you have any reason to believe that the General Motors Corp. may get lower prices which are not justified or accounted for by lower costs of the seller?

Mr. MOORE. I know of no facts to substantiate that. That is the result of simply applying economic logic to the situation in which this disparity of power exists.

Mr. McHUGH. Isn't it possible that a large manufacturer does get some special advantages merely by reason of the power it exercises through its size?

Mr. MOORE. This is a well-known phenomenon in the general history of industry. This occurs where there are great differences in size.

Mr. McHUGH. I am thinking of advantages now which are not explainable exclusively in terms of savings in cost to the seller.

Mr. MOORE. That's correct; that is still correct.

Mr. McHUGH. Do you have any opinion as to the extent to which the General Motors' superior buying power may have contributed to its size?

Mr. MOORE. No. This is a matter, I think, that Professor Edwards stated much better than I can. These are imponderables.

Even those on the inside who knew the facts of prices paid and costs of production would find it very hard to distinguish between a genuine economy due to purchasing large quantities and what I call a specious economy, due to the exercise of power. This is a very hard thing to determine, even if you have all the facts, and I certainly don't.

Mr. McHUGH. Professor Moore, isn't it a fact that many parts producers sell to large manufacturers for original equipment at cost or approximately cost, and recover their profits by higher prices in the replacement market?

Mr. MOORE. I wouldn't say that it is a fact because of the considerations in my last answer. This is very difficult to determine.

It is a fact that there are great differences in the prices as they sell to the manufacturers on the one hand, and for the replacement market on the other hand, and it is a matter of logic to suppose that those differences may not always be justified by the differences in the costs of producing these orders.

Mr. McHUGH. What would be the effect of such a practice if this is the fact, upon either the small-car manufacturers or upon small-parts producers?

Mr. MOORE. It depends upon whether the privilege of obtaining this very low price is open to all small-car producers or whether the privilege of doing this is enjoyed generally by all small-parts manufacturers.

They may all play this game of charging extremely different prices in two markets if the privilege is equally open to them.

Mr. McHUGH. Aren't there a great number of parts producers, and actually there are only a limited number of car manufacturers, who would provide the market for the original equipment?

Mr. MOORE. That's correct; there are 6 car manufacturers and 1,900, at least, firms producing components of automobiles.

Mr. McHUGH. So there must be a great number of parts producers who don't have access to this original equipment market?

Mr. MOORE. I don't know the number.

Mr. McHUGH. Would you say that with a greater volume of business being done in the replacement market, that as a result of this different price system, it can be said this practice forces consumers over the long run actually to pay higher prices?

Mr. MOORE. My general conclusion is that this has a very definite effect of keeping down the price of new cars and keeping up the price of repairing old cars, parts being so much more expensive as replacements than they are as original equipment.

Senator O'MAHONEY. Professor Moore, you haven't, of course, completely finished a full statement of what your studies have revealed to you on this very interesting subject.

The pressure of time, however, makes it necessary for us now to abandon further questions which we may have.

It may be that we shall address further questions to you at a later time, and I would like to have you keep watch over the proceedings here, so that if we want to call you back, you may be available to come.

Mr. MOORE. I shall be available.

Senator O'MAHONEY. Thank you very much, sir. You are now excused.

Mr. Burns?

Mr. BURNS. Mr. T. K. Quinn is the next witness.

Senator O'MAHONEY. Mr. Quinn, will you please come forward.

Mr. Quinn, when I opened this meeting this morning, I made the statement that it was the purpose of this committee to obtain an objective review of the automotive industry and particularly with respect to the question of size in this study we are conducting of General Motors.

I said that I would be very happy to invite any representatives of General Motors to sit around the table and participate in the discussion. May I ask you if that would be agreeable to you?

Mr. QUINN. Perfectly, Senator.

Senator O'MAHONEY. Then I want to make the announcement now to the General Motors Corp. and its executives, that they will be perfectly welcome to sit at the table and participate in the discussion which takes place as the result of the testimony of Mr. Quinn.

I do this because there have appeared in some of the newspapers suggestions that Mr. Quinn is an unreliable witness because he changed his opinion, or is alleged to have changed his opinion. That suggestion may have been a planted suggestion or it may have been a sincere suggestion, I don't know.

But in order that it may be perfectly clear to the public that the testimony which we seek is not biased testimony, is not planted testimony, I repeat the invitation which I made this morning to the representatives of the General Motors Corp. to send any one of their executives, including their general counsel and vice president, Mr. Hogan, to sit at this table. He will be accorded the privilege of questioning Mr. Quinn.

That invitation also, may I say, extends to the public-relations expert of General Motors who is now present in the room. Public relations is an art. I think we can practice it ourselves.

Mr. Quinn, you have indicated your willingness to comply with the suggestion that I have now made?

MR. QUINN. I have.

Senator O'MAHONEY. Thank you, sir.

Now you may proceed.

STATEMENT OF T. K. QUINN, PRESIDENT, T. K. QUINN CO.

MR. QUINN. Mr. Chairman, by way of identification and qualification, by name is Theodore K. Quinn. I am president of T. K. Quinn Co., a small management firm, and of the Monitor Equipment Corp., both of New York City. I am also a Connecticut farmer. I was formerly vice president of the General Electric Corp. and an officer and director of several of its subsidiaries. I was chairman of the General Electric Finance Corp., which I organized. Subsequently, by my own choice, I was president for several years of the national advertising agency, Maxon, Inc.

During the late war I served under Donald Nelson as director general of the war production drive here in Washington. I have appeared before other committees of the Congress. I am a contributor to the liberal magazines and author of several books, among them the recent *Giant Business: Threat to Democracy*, and the forthcoming *Giant Corporations: Challenge to Freedom*.

My purpose in accepting your kind invitation is to make a contribution, however small, to the perpetuation of our heritage of freedom and individual opportunity and to help check the forces, particularly those emanating from concentrated power and monopoly, that undermine in practice the basic principles of what started out as a country of genuine freedom, independence, and individual opportunity and is now moving in the opposite direction.

In my written statement, Mr. Chairman, I do not take the time to discuss the nature of the assault on the antitrust laws, the tendency away from an open toward a closed economy, what I regard as the inherent evils of superorganization with which I have been associated in the past, nor did I attempt to show how a concentration of power gives rise to demands for administrative regulation and facilitates socialization.

Economic independence as a social ideal has sound roots and it is at the base of the philosophy of antitrust. Hostility to concentrated power, particularly in private hands, is a most wholesome part of the American tradition. I regard it as being close to tragic that the work of this committee is not nationally acclaimed, but on the contrary receives limited and, for the most part, within my observation, only lukewarm response in the press.

Returning now to my statement:

The alarming facts and figures on concentration are in your record and require no repetition by me. I propose to proceed on the basis of what seem to me to be established and obviously major facts, developments, and reasonable assumptions.

TERMS AND ILLUSIONS

But first permit me to define some terms and scrutinize a few illusions. A \$10 million volume business is a big business. A hundred or two-hundred-million-dollar business is a giant business. A billionaire business is best described as a monster business. And when we get to General Motors we run out of words. Its interests are so gigantic and overwhelming that they stagger the imagination. There are those who honestly believe that what is good for General Motors is good for the United States. The interests of the entities appear synonymous, economically and politically. Yet there are some who would still deny the political implications of economic giantism.

Although it is becoming quite common practice, it just won't do to attempt the justification of giant business by pointing to the virtues of merely big business, or to support monsterism on the record of a few giants. Up to a point big business is socially efficient, and can be economically justified, but there are limits beyond which we reach danger.

The giants and monsters must be isolated and dealt with separately if we are to have a healthy economy and save our free institutions. Size is the essence of the matter.

Let us be practical about it. The theoretical discussions of monopoly to which you have listened are not always in point. The only two bakery shops in a small town may indeed combine and create a monopoly but not a consequential one. Right now the pressing, dreadful issue is giantism. The decisions of company managements like General Motors and United States Steel can determine the whole course of the country's development in human relations, organization, opportunity, profits, prices, and prosperity, regardless of our people or their representatives.

When General Motors announces that it is investing another billion or so in its own future, the friendly press, to which it pays about fifty millions of dollars a year, and more than that through its dealers, applauds. We are told how it will bolster the economy and restrain recession or promote prosperity. We are not reminded that it could as well have taken contrary action or none at all and thereby induced recession or started depression. Nor is any question raised as to how or why we ever permitted any private interest in a supposedly free country to get into the position of such influence over the Nation.

GIGANTISM IN ACTION IS EVIL PER SE

Of all the damaging slogans which have been quite generally "sold" to America principally by public-relations experts, broadcasters, and economists in the employ of the giant corporations, some of them secretly, the most seriously misleading is that "bigness is not evil per se."

Gigantism is not evil in a vacuum but we do not live in a vacuum. We live in a world of contending forces. The big fish that competes

with and devours the smaller ones is, to them, an evil. In a world of mice, cats are evil. They are as hungry and predatory as giant business corporations and they eat mice. The elephant that walks around over ant hills, with or without lethal intent is, to them, an evil. He may not even see the ants or be conscious of them but every time he puts his foot down he may kill hundreds of them and send thousands scurrying in panic. Any active giant is evil per se in a land where is it sought to preserve life, liberty, and opportunity for the ordinary individual.

WHAT IS MEANT BY EFFICIENCY

Now, take the loose use of the word "efficiency." What do we mean by it? Is it mere profit in relation to sales or investment for a private interest? Is it lowest possible cost without regard to how that cost is obtained or its consequences? I submit that the social efficiency of General Motors can never be measured by its balance sheets or profit and loss statements. We must know how the results are secured.

How are its suppliers treated? Do they prosper fairly? Is opportunity left open for new companies to enter the field? Are its dealers independent businessmen or are they virtual serfs under domination, as we heard testified here this afternoon? And above all, what are the social results of its huge operations? Does its market power intimidate other companies? Does its payments to newspapers, magazines, and other media put them under such obligation that they no longer dare to say anything inimical about General Motors or its self-elected and self-perpetuating officers' political notions or ambitions?

When decentralization of the giant or monster companies is proposed we are often met with the question, "What, would you make separate corporations of Chevrolet, Buick, Pontiac, Oldsmobile, and Cadillac? Don't you know that many of the parts are interchangeable? The same costly tooling is used on several cars and if the divisions became separate corporations, the result would be to increase the price of cars?"

An immediate, obvious answer, of course, is that Studebaker and Nash have been able to produce low-priced cars without these interchangeable advantages. But I am more interested in another reply.

If giant size and interchangeability make for genuine economic, political, and social efficiency, which is often represented, why not have General Motors make all the cars? Is our salvation entirely bound up in the single proposition of lowest dollar cost, however obtained? Do we wish to end up with the kind of superorganization they have in Russia, going by way of the back door? Maybe we don't need 20, 30, or 50 models of motor cars. Russia has only 2, or is it 3? And the bureaucracy controls the production.

Just how different is the bureaucracy of our giant corporations except that there are more of them and they are still subject, in a decreasing degree, to public opinion and our political institutions? We should recall the experience of Germany under the Fascists, and the cartels.

The statement has been made that there is no such thing as an entrenched and unassailable position in the automobile business. It was made before this committee. Neither is there in a horserace. But

when 1 or 2 or 3 interests own the track, have the only means to employ the best stables and jockeys, enter more horses in the race and finally have their own people represented among the judges, the results are practically inevitable. What chance is there, honestly, for any new-comer? Black Beauty must be sent back to the pages of fiction.

Senator O'MAHONEY. Mr. Quinn, I am sorry to interrupt you at this point. Time has sort of run away with us today, much more rapidly than I had expected.

It had been our plan to have Mr. Joseph A. Seeley conduct the examination of you, but it seemed in view of the fact that I must recess the hearing at this point, to have you make this much of the opening statement, that tomorrow morning we would hope to have you take the stand again, if you will, and proceed with your discussion of your theme that General Motors is too big for the economic health of the country.

That will be satisfactory to you, I am sure.

Mr. QUINN. Yes, sir.

Senator O'MAHONEY. I may say that it has been our plan tomorrow, on November 9, to explore the problems involved in General Motors' activities in industries other than automobiles.

While the public is fully aware of General Motors' dominant position in the automobile industry, it is not aware that General Motors is in an even more dominant position in the manufacture of locomotives. The economic impact on the locomotive industry of General Motors' entry into this field with its diesel locomotives will be illustrated as we proceed.

I want to make this announcement because I know how important it is to the press to have a new lead for the next story. We shall endeavor to keep you fully satisfied, and we do hope that the executives of General Motors and the officers of the Brookings Institution will cooperate in providing new leads for the press in the story of this hearing.

Thank you very much, Mr. Quinn, for your cooperation.

I now declare the meeting adjourned until 10 o'clock tomorrow morning.

(Whereupon, at 4:15 p. m., the subcommittee recessed, to reconvene at 10 a. m., Wednesday, November 9, 1955.)

A STUDY OF THE ANTITRUST LAWS

WEDNESDAY, NOVEMBER 9, 1955

UNITED STATES SENATE,
SUBCOMMITTEE ON ANTITRUST AND MONOPOLY,
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met, pursuant to recess, at 10:10 a. m., in room 424, Senate Office Building, Senator Joseph C. O'Mahoney presiding. Present: Senators O'Mahoney (presiding) and Kefauver.

Also present: Joseph W. Burns, chief counsel; Donald P. McHugh, assistant counsel; Joseph A. Seeley, assistant counsel; Gareth M. Neville, assistant counsel, and Jesse J. Friedman, economic consultant.

Senator O'MAHONEY. The session will come to order.

This morning I have to put in the record a letter received by me from the Brookings Institution. This is addressed to:

Senator JOSEPH C. O'MAHONEY,
*Acting Chairman, Subcommittee on Antitrust and Monopoly,
Senate Judiciary Committee, Washington, D. C.*

DEAR SENATOR O'MAHONEY: In your telegram of November 7 regarding your request that Dean Russell Stevenson of the University of Michigan; Prof. Clare Griffin of the University of Michigan; and Prof. Lawrence Seltzer of Wayne University testify before the Subcommittee on Antitrust and Monopoly you state, "I am confident that upon reviewing the request made by members of our staff and the conversation you had with them, it will be your desire to release the gentlemen in question from any inhibitions they may feel so that the Congress of the United States and the people of this country may have the benefit of the objective study of big business which your institute recognized as a problem of such significance that you undertook to study it."

In reply I should like to state, with the greatest respect for the work and responsibilities of your committee, that the three gentlemen in question are entirely free to testify before your committee in their own discretion and the Brookings Institution is imposing no inhibitions against their appearing to testify. The institution does insist, however, that if these gentlemen testify they are not free to reveal information acquired in personal interviews in 1948 and 1949 for the research of this institution. The research on these materials is not being carried on by them or under their direction, and they are in no position to testify on the findings or on the present status of the research which is still in progress here.

In my letter of November 4, 1955, to Mr. Joseph W. Burns I state: "We believe that the decision to testify or not to testify regarding the General Motors Corp. by the three gentlemen in question must be freely determined by them in light of their obligation as scholars possessing confidential information obtained for a third party from a corporation now subjected to inquiry. If any of the three gentlemen wishes to testify before your committee regarding information he has obtained about the General Motors Corp. from other sources than the confidential interviews for the Brookings Institution, this institution would interpose no objection. However, we cannot approve of their revealing information about the corporation which was obtained in confidence for the research of this institution, when that information has not been verified as accurate by us or by the corporation. Hence we cannot assent to any plan for making available to your committee

the confidential notes which were prepared for our research and which have never been verified."

Dean Stevenson, Professor Griffin, and Professor Seltzer, like others who at one time have served as temporary consultants to the Brookings Institution, have already appeared before congressional committees and discussed antitrust problems. They are now completely free agents to testify as they wish before any committee, and they need no authorization from us to testify before your committee. They fully understand the responsibilities of academic integrity and they need no instructions from us with respect to the ethics of handling privileged information. Brookings cannot honorably request them to violate the confidence of any who collaborated with them in their inquiries.

I interrupt to say that nobody on this committee and nobody on the staff of this committee made any request of any of the professors of the Brookings Institution or of General Motors that a confidence should be violated. I say that, although I also recognize the fact that there is not in economics that band of confidence which is recognized in the courts between an attorney and his client.

I also say, and this is also stated in a letter to Mr. Burns by one of the professors, that this committee has the power of subpoena and can bring these gentlemen before the committee if it should desire to issue a subpoena.

I proceed now with the Brookings Institution letter:

The willingness of the General Motors Corp. to "waive any pledges of confidence if the corporation is requested to do so by the Brookings Institution" does not absolve this institution and its staff of responsibility for respecting the confidential relationship established in obtaining information from officers of corporations who were encouraged to give their views informally, speaking for themselves and not necessarily for their corporations. All research into the policies and motivations of corporate management would be jeopardized if the privileges of free private expression were thus abused.

You state that "It is not our purpose to ask these professors to reveal the names of people who furnished them information or the specific replies made by any of the persons interviewed." And you add, "We want no names, we want no quotations from what may be stated by General Motors officers, employees, or suppliers. We want only basic facts as to the manner in which this business is carried on in interstate and foreign commerce." This institution, as I have previously stated, has no objection to the submission of testimony that does not violate the confidential relationship established at the time the three gentlemen conducted interviews for this institution.

With reference to your statement that "a fear is entertained that the purpose of the committee is somehow to introduce antitrust proceedings," let me explain that no such fear is relevant to the research of the Brookings Institution. This institution is not an agent for any corporation. Under the Brookings charter the institution can have no clients, nor can it serve the special interest of any political, economic, or social group.

I note with interest, interrupting again, the absence from the letter of any declaration of freedom of serving the people of the United States and the Congress of the United States under the Constitution. This is a distinction which should be borne in mind by all to whom this exchange of correspondence comes. I proceed:

Its research is conducted solely from the point of view of the public interest and solely for the enlightenment of the people as a whole.

This is serving the public interest, I interrupt, and enlightening the public under a bushel basket. Is the Brookings Institution to be the judge of what is good for the public interest or is the Congress of the United States to be the judge?

In view of your statement today, which appears to have given the impression that the Brookings Institution was objecting to the introduction of testimony by Dean Stevenson, Professor Griffin, and Professor Seltzer, I request that

my letter of November 4, 1955, to Mr. Joseph Burns, chief counsel for your committee, and this letter be incorporated in the transcript so as to make the position of this institution clear.

Sincerely yours,

(Signed) ROBERT D. CALKINS, *President*.

Now, if I were inclined to make a wisecrack about this correspondence, I would compare it to the famous baseball combination which was the object of my admiration when I was a young man, the combination of Tinkers to Evers to Chance. I don't know who represents Chance in this play on the baseball field, Tinkers to Evers to Chance.

I have pointed out that we have the power of subpoena, but I have also said that the purpose of this committee is not to make a spectacle. It is not to pillory the General Motors or any executives of General Motors. The purpose of this committee is not even to ridicule the professors or the Brookings Institution. The purpose of this Committee is to find the basic facts of the significance of big business in the economic society in which we live.

What has been constructed in the United States by reason of the failure of Congress competently to meet the problems involved in the antitrust laws is the establishment of a private economic government operated without any rule of law, because what the commissions and the boards may say one day can be changed another, because the activities of the Department of Justice depend wholly upon the rulings of individuals as to what is unreasonable restraint of trade, and various other phrases used in the law and in the decisions as to what they actually mean.

We are in this situation because Congress has not yet found a way to write a rule of responsibility and of power and of duty on the part of the great corporations which necessarily, because they have the initiative, exercise a far-reaching effect upon the economy of every living citizen of the United States.

They go further than that indeed. By what these great corporations do, our foreign relations are frequently governed.

The corporations created by the States, which are forbidden by the Constitution to enter into any agreements with foreign countries, do themselves enter into agreements with foreign countries.

We need go no further than the history of the oil industry in Iran, Iraq, and Saudi Arabia, to know that corporations created by the States have an international foreign policy of their own, and every family in the United States, whether those families are employed as executives of big corporations like General Motors or by other great international corporations or by dealers in the automotive industry or by agents who sell oil in various stations, every one of these families in the whole scope of American and international policy is affected by what this private economic government does by its own rule of law.

Has the time not come for institutions like the Brookings Institution, for professors of great educational institutions and for the heads of these great corporations, to abandon their refusal to co-operate and come frankly together with the representatives elected under the Constitution by the people to regulate commerce with foreign nations and among the States?

This committee will not, if my advice is followed, attempt to issue any subpoena, but it will seek to have a private conference with the

representatives of these three groups to see whether or not it will not be possible for them to come before this committee and make their contribution to the solution of the greatest economic problem in the world. I think they cannot avoid it.

Mr. Burns, do you have a copy of the letter that was addressed to you?

Mr. BURNS. I am having a photostat made so it can be handed to the stenographer to be included in the record.

Senator O'MAHONEY. Let it be included in the record immediately after this.

(The letter above referred to is as follows:)

THE BROOKINGS INSTITUTION,
Washington 6, D. C., November 4, 1955.

Mr. JOSEPH W. BURNS,
Chief Counsel, Antitrust and Monopoly Subcommittee,
Committee on the Judiciary,
United States Senate, Washington 25, D. C.

DEAR MR. BURNS: In view of our earlier conversations regarding your desire to have Dean Russell Stevenson, Prof. Clare Griffin, and Prof. Lawrence Seltzer testify before your committee on the General Motors Corp., and in view of the former connection of these gentlemen with the Brookings Institution, I should like to set forth the position of this institution.

Dean Stevenson, Professor Griffin, and Professor Seltzer in 1948 were members of the staff of the Brookings Institution. In that capacity they participated in our studies of large corporations. Those studies were undertaken with the cooperation of a number of large business concerns who agree to provide information regarding their operations on a confidential basis. The interviews were arranged by the cooperating corporations in response to our request and with the pledge of the Brookings Institution that information obtained would be regarded as strictly confidential and would be used solely by this institution in preparing its studies of big-business practices. It was understood that when we had made our analysis, the factual statements contained therein regarding the practices of particular companies would be submitted to the companies involved for verification before publication of the findings.

The three gentlemen named conducted a number of confidential interviews with officials of the General Motors Corp. These interviews were arranged at the request of the institution with the assurance that their confidences would be respected. The gentlemen in question, after interviewing officials of General Motors Corp., prepared interview notes regarding the matters discussed. These interview notes have never been checked for accuracy or cleared by the corporation. Until our research on the practices of the General Motors Corp. has been completed, and cleared with the company for accuracy as to the facts, the institution is not in a position to provide information about the corporation. When the research has been completed and cleared we will, of course, be glad to make a copy of the manuscript available to your committee.

Adherence to the foregoing confidential relationship is vital to the continuation of present and future research on business practices. This institution has existing obligations to respect the terms on which it obtained information, and it has a very great interest in seeing the continuation of empirical research that calls for the cooperation of business in making confidential information about current practices available to scholars. Because of these obligations and interests we find it necessary to take a position with respect to any testimony that might be introduced by Dean Stevenson, Professor Griffin, and Professor Seltzer, if they were to testify.

We believe that the decision to testify or not to testify regarding the General Motors Corp. by the three gentlemen in question must be freely determined by them in light of their obligation as scholars possessing confidential information obtained for a third party from a corporation now subjected to inquiry. If any of the three gentlemen wishes to testify before your committee regarding information he has obtained about the General Motors Corp. from other sources, than the confidential interviews for the Brookings Institution, this institution would interpose no objection. However, we cannot approve of their revealing information about the corporation which was obtained in confidence for the research of this institution, when that information has not been verified as accurate by

us or by the corporation. Hence we cannot assent to any plan for making available to your committee the confidential notes which were prepared for our research and which have never been verified.

Moreover, we do not see how these gentlemen can testify about this company and differentiate between general knowledge they have acquired from other sources and knowledge they have acquired confidentially in their capacity as research consultants for the Brookings Institution. Even if it were possible for them to distinguish between these two types of information, their testimony would almost certainly be regarded as a violation of confidences by the cooperating companies who have supplied us with confidential information. Such an act would jeopardize the standing and respect for this institution and create the impression that it had violated a confidence honestly tendered and honestly accepted. The Brookings Institution cannot countenance or be a party to any such real or implicit breach of confidence. To do so would not only impair our present research which depends on the continued cooperation of business firms, but it would undermine all such empirical work and greatly impede research that is capable of giving us a better understanding of the very business practices which are of concern to the Congress and the American people.

It is our understanding that counsel for the General Motors Corp. has indicated that if the corporation is requested to do so by the Brookings Institution, it will waive any pledges of confidence made to them and will ask for a waiver from any personnel or any suppliers of information who were consulted. Such an action would not vouch for the accuracy of the information contained in our notes, nor would it protect our research from the charge that cooperation may lead to public disclosure of the information given. We must, to the best of our ability, abide by the pledge of confidence which we gave to cooperating firms, and accordingly, we are not willing to ask the General Motors Corp. to waive the pledge of confidence which we gave to them, along with other corporations.

We do not consider that the unverified impressions and notes of the three interviewers will add important factual information to the testimony before your committee. We cannot request the disclosure of that information prior to the time when we can vouch for its accuracy.

Very truly yours,

ROBERT D. CALKINS,
President.

Senator O'MAHONEY. Mr. Burns, do you care to proceed now with Mr. Quinn?

Mr. BURNS. Mr. Seeley will conduct the examination.

Senator O'MAHONEY. Will you please identify Mr. Seeley for the record?

Mr. BURNS. Joseph A Seeley, assistant counsel, will interrogate Mr. Quinn.

Mr. SEELEY. Mr. Quinn, I think you had not completed your prepared statement. Would you like to continue with that?

STATEMENT OF T. K. QUINN, PRESIDENT OF T. K. QUINN CO.—

Resumed

Mr. QUINN. Mr. Chairman, when we discontinued yesterday afternoon I had proceeded as far as page 5, according to the copy I have of my statement. I propose therefore to go on with my statement beginning with the subtitle "General Motors Is Too Big for the Economic Health of the Country."

Senator O'MAHONEY. That is correct. That is where you were. I was sorry to have to interrupt you yesterday.

Mr. QUINN. We are witnesses to the irresistible market power of sheer size in the adventures of General Motors into other than automobile fields. It did not take the corporation long to acquire 76 per cent of the locomotive business of the country. What railroad presi-

dent would dare say, "No," to the largest shipper over his lines? And when General Motors decided to get 95 percent of the bus business, it merely purchased buslines. The corporation has entered the large gas-engine business and may eventually have most or all of it. Every purchasing agent in the Nation, and certainly those with whom I come into contact, must be mindful of General Motors' enormous purchasing power, a vastly underestimated force that our academic people do not begin to measure.

Senator KEFAUVER. Mr. Chairman, may I ask a question there?

Senator O'MAHONEY. Senator Kefauver.

Senator KEFAUVER. Mr. Quinn, back here you said:

It did not take the corporation long to acquire 76 percent of the locomotive business of the country.

I don't know just what that means.

Mr. QUINN. The diesel engine, the motor power, the driving engine for the railroads.

Senator KEFAUVER. You mean they own 76 percent of the stock or interest of the companies that make those?

Mr. QUINN. Oh, no. Of the volume of the business that is done in locomotives. That is to say, if there were a hundred locomotives sold, they sell 76 percent of them today, 76 of the hundred.

Senator KEFAUVER. They are made by General Motors or some subsidiary?

Mr. QUINN. That's right.

Senator KEFAUVER. More particularly what are they?

Mr. QUINN. Diesel engines.

Senator KEFAUVER. What are the diesel engine companies, the subsidiaries of General Motors?

Mr. QUINN. What do they call that division?

Senator KEFAUVER. Yes.

Mr. QUINN. The electromotive division.

Senator KEFAUVER. Is that a wholly owned subsidiary?

Mr. QUINN. Oh, yes.

Senator O'MAHONEY. It should be stated, Mr. Quinn, that General Motors is constructed in a manner different from some corporations engaged in different businesses. Instead of having a group of subsidiary corporations, it has one corporation operating in several divisions. There is a division for Cadillac, for example, and all through the line.

Now there is a special division for the manufacture of these electromotive engines like the diesel, but the General Motors Corp. has progressed to such an extent in the manufacture of diesel engines, such as locomotives, that it has taken over 76 percent of the whole business in railroad locomotives. That will be a subject of testimony immediately after Mr. Quinn has concluded.

Senator KEFAUVER. Just one more question. Is that 76 percent of the diesel business or 76 percent of the diesel plus the steam-engine business, of the entire business?

Mr. QUINN. I don't think they make anything other than the diesel.

Senator O'MAHONEY. You said 76 percent of the locomotive business.

Mr. QUINN. Yes.

Senator O'MAHONEY. That includes all locomotives.

MR. QUINN. But diesel is what they are putting on currently. The other is pretty well outdated, outmoded. It doesn't amount to anything.

Senator KEFAUVER. Excuse the interruption. I just wasn't clear as to what you meant. Go ahead.

MR. QUINN. Anticipating the big, national roadbuilding program which will run into billions of dollars, announced by the administration, General Motors apparently with nothing original to contribute, entered the earth-moving equipment field by buying out the Euclid Co. You may be sure that with its influence and purchasing power, the corporation may soon dominate that big field although there are other good companies in it.

These other companies may remain hopeful, imagine they have some inside track to General Motors and not protest but when the chips are down they will suffer nevertheless.

Their stocks as an investment will be a little less attractive in my judgment to the public as soon as it is discovered that General Motors is a newcomer.

Have you observed how difficult it is to uncover complaints? One explanation is that General Motors is a customer of many of its competitors. General Motors has about 20,000 suppliers from whom we may never hear very much. I happen to have a friend who operates a small company, a supplier of General Motors. They are very unhappy with the arrangement because they are held to almost impossible specifications and to prices that it is very difficult for them to meet. Their return on their capital investment is little or nothing, but General Motors now is such a large customer and takes so large a part of their output that to discontinue would mean laying off people and perhaps even ruining the whole business. So they hang on, as it were, by their fingernails.

But if you ask me to give their names today, I think I would go to jail rather than give it to you because I believe the company would suffer. And therefore they will not appear here voluntarily to testify. Now I cite that only as an illustration of the situation you have to face.

Senator O'MAHONEY. So that professors and company heads, both out of fear, apparently decline to testify.

MR. QUINN. I think that is undoubtedly true.

By an adroit use of its purchasing power, the corporation could silence almost any protestant. General Motors, for example, buys refrigerator parts, which it could as well make for itself, from American Motors. I don't know why. The bigger the corporation becomes, the more threatening this sinister reciprocity influence.

General Motors could at will enter any field it chooses and become even more industrially dominant. While we so zealously protect its right of free enterprise, we are repressing the free enterprise rights of thousands, tens of thousands, of other concerns and individuals. The whole electrical-appliance industry lives in the shadow of the danger that General Motors may choose tomorrow to double its appliance business, which it could do by reducing prices 5 or 10 or 15 percent, and temporarily absorbing the losses.

Senator O'MAHONEY. Or deducting the losses from income-tax returns.

Mr. QUINN. I accept the amendment.

Such losses on its one to two hundred million dollar electric appliance volume—that is merely an estimate on my part—would be lost in its overall volume of about \$12 billion for 1955 and gross profit of over \$2 billions.

It is regrettably not now required to publish separate departmental reports. As soon as a giant corporation absorbs a smaller one, all publicity with regard to the operations of that company move behind a paper curtain and we don't know any more.

Senator O'MAHONEY. Paper? Why do you say a "paper curtain"?

Mr. QUINN. Only because they use paper to write their reports on.

Senator O'MAHONEY. Well, we never see the reports, and of course, we don't see the curtain.

Mr. QUINN. No.

Senator O'MAHONEY. It is an invisible curtain, not a paper curtain.

Mr. QUINN. Paper only in the bookkeeping sense.

Senator O'MAHONEY. And because the United States Congress has not yet written a law which will allow the people through their Government to find out what is going on.

Mr. QUINN. Let me elaborate on that a little from experience. One of the most profitable, if not the most profitable division of the General Electric Co. is the electric incandescent lamp bulb business. We are paying tribute to them now in this room, these burning lights that last too short. Every time in fact you change a bulb—who has not had that experience?—you are paying tribute.

The General Electric Co. has about, I should judge now, and these are estimates, but educated estimates, 60 percent of that business. I should estimate that Westinghouse has 25 percent and Sylvania perhaps 15 percent. That is the 100 percent for lighting all of America once the sun goes down. The profit of that business in my time ran as high as 40 percent on the investment. I have no figures for recent years, but I should venture to guess, to estimate, that the profit on that business for General Electric is certainly over 30 percent on its invested capital.

Now, of course, those figures will never appear, and the sun will never shine the light of publicity on what could be an effective force in the public interest, if we knew or had some access to those figures which are lost in the overall figures of the General Electric Co.

Therefore I have recommended, I recommend now and have heretofore, among other things, that by all means all of these companies operating various businesses and departments should be required once a year at least to publish in detail the balance sheets and the profit-and-loss statements of their various departments.

Senator O'MAHONEY. It may be well for this committee to refer that recommendation of yours to the Secretary of the Treasury. When we have a meeting of the committee, the subject will be discussed.

Mr. QUINN. The public is not informed on the evils of giant business. Why does the public remain largely in the dark on the giantism issue? Is it not because the giants are the principal supporters of our newspapers and magazines through their huge advertising appropriations? Mr. Robert Hutchins, formerly president of the University of Chicago, recently pointed out that concentration has moved into the communications field. In 94 percent of American cities and in 18 American

States, there are no competitive newspapers and there can be no competitive debate among editors. He courageously took the editors to task for the so-called one-sided press. However, to attack the American Association of Newspaper Editors for indifference or silence where big interests are involved is quite useless, in my opinion.

Every mother's son of them might agree wholeheartedly with you and still be unable to do anything about it. The editors today are not generally owners but hired men. They are not free to speak their minds. They must be constantly careful to see that nothing in their papers offends any giant advertiser. A kind of golden blanket is thrown over criticism or reflections on the giants and their power. The voice of the big city press and of the slick magazines is today the voice of big money and big advertising.

Senator O'MAHONEY. Mr. Quinn, I would like to interrupt you there to say that having once been a newspaperman, a reporter, a city editor, and an editorial writer, while recognizing the situation which you describe of the power of the big advertiser, I still feel that the press as a whole and the radio are to be complimented by the degree of fairness with which they do discuss these issues.

I know, of course, that editorials are not always as free as we should like, but I still believe that in fairness to the press, to the television, and to radio, we ought to acknowledge that those of us who are seeking to obtain a wider knowledge of the vital issues that affect society today are not entirely snuffed out by the news associations.

Mr. QUINN. The news is not suppressed but whenever it appears unfavorable to those who supply the advertising support money, it is seldom, if ever, treated critically. We could hardly expect this result to be otherwise. We are kept well aware of the totalitarian influences from without but what of the internal totalitarian trend chargeable to the giant private collectives that are daily becoming more formidable?

In the advertising agency business I have had the experience of being solicited by publications with the argument, "We are on your side." The side, of course, to which they referred was the giant business interest. With a few notable exceptions, the entire press of the country is on that side. Newspapers and magazines could not exist as they are without their advertising revenues, and increasingly much or most of it comes from the giants.

CONFUSION OVER COMPETITION

Whenever the practices of giant corporations in big industries become the subject of debate or of inquiry by congressional committees, the reply, "They are competitive," continues to be accepted, mistakenly, as a complete and satisfactory answer. Mr. Harlow Curtice, the able, gentlemanly president of General Motors, quite obviously considered conclusive his statement to that effect to the Senate Fulbright committee in March 1955, when the automobile industry was under question. Certainly there is competition in the automobile industry although it is not a price competition that now precludes huge manufacturing profits for the giants. As we learned yesterday, the competition is very largely among the dealers where price is involved.

The academic attitude favorable to competition dates back to Adam Smith and John Stuart Mill who wrote under conditions where

competitors had somewhere near equal status and power. Competition proved under those conditions to be stimulating and productive and it has been a motivating force in the development of our country.

It has worked well under open market conditions among competitors of somewhere near equal size. But we have outlived that era. An entirely new and different set of circumstances confronts us. The general rule today in America is that from 3 to 5 giant companies are in substantial control of each of our major industries. They do not compete with each other in price because they are too big; there would be too much bloodshed and no ultimate profit gain. In a way they are like Russia and the United States; possessing overwhelming destructive power, they simply cannot afford to fight. The results would be mutually disastrous.

The fallacy of price competition as a constructive force under all circumstances is proven by what we have learned in the automobile industry. General Motors, Ford, and Chrysler could force the other remaining competition out of business, as they have all the rest. We could conceivably end up with only 2 companies, or even 1, a stronger monopoly.

But the question would then be: Would the country be better off without Packard or Studebaker, Nash, Hudson, Willys, or Kaiser? Is that what we want?

Unrestricted competition as an ideal has failed. Mice do not compete with cats; they hide from them. We do not match bantamweights with heavyweights in the prize ring and we cannot do it without foregone conclusions in commerce and industry. At the same time we know that the best results may be secured from many independent enterprises and fair competition as in the athletic world, for example. This is best too, in principle, because it means the democratic distribution of power and the opposite of concentration.

If we wish to preserve the independence of the smaller, more socially efficient companies, the companies you will remember which I distinguished earlier up to the point of being big business but not giant business or monster business, we can do it in the long run only by taking the giants in hand, checking their undue power and holding them within the bounds of special rules and regulations.

This does not necessarily mean controlled monopoly. It means restricting autocratic power of the giants to save our system. Competition in all segments of our society could continue until some one or few companies become so big in a given industry as to threaten the whole system. They would then come under the new restrictive legislation.

Senator O'MAHONEY. Mr. Quinn, would you mind giving a definition of your concept of socially efficient companies?

Mr. QUINN. Well, sir, if you recall, I undertook to define earlier or at least to discuss what we mean by efficiency.

Efficiency to an operator in business, a manufacturer, for example, is determined by either the ratio of his profit to sales or his profit to his investment, and he is not necessarily concerned with any other consideration at all.

You recall, perhaps, I suggested that we must also consider many other factors today. How did he arrive at the low cost that permitted that larger profit rate? Did he get it by pressure on small companies? Did he treat his suppliers fairly? What was the effect, too, in the

broad sense of his becoming so large that he introduces us into another kind of society?

I mean to say if General Motors has all the business in automobiles, as I believe I suggested, then we get to the question of policy, of whether we want that kind of super organization in America.

Now, those are some of the things that I mean when I distinguish or attempt to, between narrow efficiency measured in terms of profit to investment on the one hand, and profit, if you please, in relation to all of these other factors.

GIANTS SET THE PACE FOR MERGERS

You have heard most of what can helpfully be said on the subject of mergers. Mergers as wholly defensive moves have not, to my knowledge, been stressed anywhere. The existence of giants in any field is an automatic incentive to its competitors to merge, not necessarily for greater efficiency, as is so often misrepresented, but for offsetting capital and market power. There is no better evidence of the power of sheer size in business concerns of today than the continuance of the determined efforts to attain it.

I have used the homely illustration of imagining that a giant 12 feet high walked through that door, with predatory instincts and competition in his mind. I suspect that the disposition of the rest of us would be to merge in protection against him, and I think that consideration is also a big factor in the merger trend.

Senator O'MAHONEY. You remind me of a television serial which is now running on one of the big television channels. It is the story of Robin Hood. And, of course, the basic theme is exactly the same as the theme that we now have.

In those days land was the principal source of production, and those with predatory instincts drove the peasants off the land so that they could control the production. Now, in the economic society in which we live, the peasants are being driven out of the industrial control—

Mr. QUINN. I agree.

Senator O'MAHONEY (continuing). And it is the business of Congress to find the way of protecting the peasants, the industrial peasants, from the predatory activities of the monsters, of whom you have spoken.

Mr. QUINN. I agree.

The General Electric Co., with which I was long associated, was the first to put together a line of electrical products in the appliance field under one brand name. We were not motivated by any thought of efficiency, that is, social efficiency, or greater service but by the desire for gain and to build the strongest market position. We had the means to do it. Since then and particularly in the past 25 years, practically all competitors have been forced to follow with more or less "full lines"—Westinghouse, General Motors (Frigidaire), Philco, Hotpoint, Admiral, Crosley, Sears (Kenmore), and the rest. The latest is the combination arrangement effected by RCA, Whirlpool, and Seeger Refrigerators, just last month, and each of those, of course, are concerns with volumes in excess of \$100 million annually.

Each of these companies has branches or distributors in all of the major cities that concentrate on their products and are not available as outlets to the independent producers of any single product. If

those of us in this room were to form a corporation for the production and sale of a new refrigerator, for example, we should have an almost impossible job on our hands to find satisfactory wholesale outlets. Instead of continuing as a separate company, we would undoubtedly find it to our advantage to merge with one or more other companies, as practically all of the other have done. There are very few independents left outside the fold.

Senator O'MAHONEY. Then what this amounts to, Mr. Quinn, is a statement that while there may be competition among the national companies—and I gather from your statement you say there is—General Electric, Westinghouse, General Motors so far as Frigidaire is concerned, Philco, Hotpoint, Admiral, Crosley, Sears are all separate and distinct corporations; are they not?

Mr. QUINN. With the exception of Hotpoint, which is a division of General Electric, what you have said is true.

Senator O'MAHONEY. In other words, there is then competition among these companies on a national scale, but what you are pointing out is that in this field of activity the little fellow can't get in?

Mr. QUINN. It is very difficult.

Senator O'MAHONEY. It is like the situation in the newspaper field.

Mr. QUINN. I should not advise any client of mine to undertake it as a good business venture.

Senator O'MAHONEY. We found out only a few years ago that Marshall Field's son, Marshall Field III, with all his great wealth, was unable to break into the newspaper field in the city of New York. Now, that wasn't due to any conspiracy against him, but was due to the great expense of publishing an adequate newspaper, I would think.

Mr. QUINN. Once the pace and pattern is set by the capital giant, it becomes difficult, if not impossible, for any independence successfully to assert itself.

There is one other aspect of the merger question I should like to emphasize. The only effective, practical way to maintain the maximum number of independent companies is to decentralize the big ones at the top. It is most difficult to argue against a Bethlehem-Youngstown merger so long as United States Steel, which is a combination of over 100 corporations, is allowed to continue. To start at the bottom and prevent smaller mergers would amount to further protecting those giants already in existence.

In other words, I feel that in the case of Bethlehem-Youngstown, as much as I would be opposed in principle to such big mergers, I should find it very difficult to argue against them when they say that they are not represented in the middle States, and that if they merged they could then compete, not in price of course—they don't compete in price—but in service, with United States Steel.

I don't know how to argue against it. And yet the Attorney General, as I understand it, has taken a position opposed to it. I think that is the wrong remedy.

THE ANTITRUST LAWS AND THEIR ENFORCEMENT

If there be any who still believe that the intent of the Sherman law and of the Clayton Act have not been circumvented, or who contend that enforcement has been effective, I should say to them, "For goodness sake, look around you at where we are and what has happened."

If there be any left who question the existence of monopoly, oligopoly, and the substantial control of our basic industries and therefore the economy as a whole by a relatively few giant companies, I should make to them a similar reply.

To those who may say everything is all right as it is, I should answer, "It isn't: it changed even while you were making your statement." It is the trend and the direction that should most concern us.

If there be any who say it's all a natural development and "you can't do anything about it," I would reply, "You, sir, are an unconscious Marxist." We have done and we can do something about it. That, indeed, is a basic spirit and principle in America and has made us what we are. Only to the extent that we have done something about it have we so far avoided communism, Marxism, socialism, or what else.

Prof. Louis B. Schwartz, a member of the Attorney General's Committee To Study the Antitrust Laws, has shown most forcefully how the committee concentrated on legal analyses of existing statutes and decision. It did not face up to the issue of giantism or means by which it could be effectively controlled.

Senator Sparkman has pointed out that 73 of the committee's 85 recommendations are purely administrative in character, to be given legal effect merely by the personal decision of an antitrust administrator. Dr. Schwartz further demonstrated that some of the committee's conclusions would have an effect opposite to those intended.

The antitrust laws have failed both because they are inadequate to the requirements of today's conditions and because they have not been enforced. Public opinion, influenced as it has been by the media which feel obligated to follow the giant interest line, has not helped to create a climate of strong support either for the antitrust laws or their enforcement. So the lawmakers are not entirely to blame—

Senator O'MAHONEY. Thanks for the amendment.

Mr. QUINN (continuing). As second thoughts are sometimes best. But I have no profound objection to the word "politician."

Senator O'MAHONEY. No; neither do I.

Mr. QUINN. It doesn't at all mean to me what is inferred by the way in which it is abused.

Senator KEFAUVER. What do you mean by that word "entirely"?

Mr. QUINN (reading):

* * * are not entirely to blame.

I think they are in part to blame, because I think that the lawmakers should lead a little as well as to follow.

Senator KEFAUVER. Well, I agree with you.

Mr. QUINN. The laws should, of course, be enforced. But beyond this we are badly in need of additional legislation to curb, restrict, and regulate giant corporations, decentralizing them in many instances and making generally certain that they shall not be permitted hereafter to discourage, eliminate, or mistreat others, prevent constructive competition, or otherwise impair our economic or political freedoms or our system.

Now, I have a section here refuting the arguments advanced for the giant corporations, and for the purpose of this statement I have tried to select from the spokesmen for giantism and monopoly their most commonly used arguments and then to give a reply to them.

Following is a partial list of the arguments most commonly advanced in behalf of giant corporations, together with my refutations. No. 1:

Giant business concerns have been leaders in expansion and in bringing about technological change. Two out of three research workers in American industry are employed by large concerns—firms with 5,000 or more workers.

My reply: Of course, this is inadvertent evidence of the growing concentration which is so often denied, there is actually danger of the giant companies eventually employing all of the research workers. The result will be a further decline in original, independent, creative work of the kind that built this country. Big laboratories work on directed projects from a central authority. All of the experience proves that genuine, creative work cannot be directed if the best results are to be achieved. If they could be, the Russian system would be better than ours.

Men must be free to follow their secret hearts in any direction they individually choose, however foolish it may appear to others. This is the democratic ideal. No one has advance knowledge. If they did, research would be unnecessary. Invention has declined as industrial control has become more concentrated and centralized. Since 1920 the rate of patent applications to the Patent Office has decreased 40 per cent. There may be other explanations, but this is a surprising figure. In fact, it is so surprising to me that, while it was given to me as an authentic figure, I am going to check it again, and I question it. It doesn't seem possible.

(2) The statement is made:

The concentration of production among a few big rivals usually stimulates competition rather than weakens it.

Let us examine this claim. There are only six manufacturers left in the automobile industry. Is it meant that if all but General Motors and Ford are eliminated, competition will be greater? Is it meant that there was less competition when there were well over—we found out at any one time yesterday there were no more than 81.

What kind of competition is referred to? Surely not price competition. Experience has proven over and over again that price competition decreases as the number of competitors in any industry decreases. In his report to stockholders for the year 1954, issued in April 1955, lawyer G. A. Price, president of Westinghouse, says in part:

Competition is so intense that a strong downward pull is being exerted on prices * * * particularly in the consumer field—

he is not so worried about the industrial field—

where a great many manufacturers are competing for a larger share of the market * * * as a result, there is a greatly increased pressure on profit margins * * *

Price competition still prevails in the electrical appliance, consumer industry but it is strongest among distributors and dealers, and it is all subject to what the few leaders will allow.

(3) The claim is made:

Results are better among bigger concerns because mistakes are more costly.

This is a specious argument. Mistakes are not more costly proportionately. If there were many automobile companies fighting for their

very lives, the risk to each of them would be much greater and we could expect livelier competition in prices as well as in style and quality. Merely to reduce possible losses is a relatively gentle degree of competition compared with the fight to live. It is the difference between the dog who was running for his dinner and the rabbit who was running for his life.

(4) It is claimed:

Concentration of production among a few large rivals stimulates competitor's efforts and since no one in a small group likes to be the first to raise prices, the concentration of production among a few large firms tends to protect consumers against rising prices.

I am indebted to Mr. Sumner Slichter, of Harvard, for that claim, to which I would answer:

I submit that the experience has been just the opposite. It is not always a question of increasing prices but of failure to decrease prices when volume is needed or costs are lower. Price decreases, by the way, have not been noticeable in recent years. The fact is that the price leader in a small group announces first and the others follow, as in the case of steel. No stigma or reflection attaches to the leader. On the contrary, if he did not act in the interest of the group, he would lose his leadership. When he raises prices, he is quietly applauded by the other members of the group whose profits will increase when they follow, as they always do. Thus United States Steel increased prices after the war when the whole industry was running at less than 70 percent of capacity. The others followed. The press, I am sorry to say, the country over, raised no objection and very little comment, so far as I could tell.

No. 5, the claim is made:

The bigger the concern the more conspicuous its policies and practices. Size makes for better ethical conduct.

Of course, this would be truer under conditions of greater competition and is less true as monopoly is attained. The monopolist is absolute; he does not have to please anyone. But the goldfish bowl argument in behalf of giant corporations does not comport with the facts that concerns like National Lead, Union Carbide, Dow Chemical, American Cyanamid, Du Pont, and General Electric have all been indicted, some of them several times, for violation of the antitrust laws. Du Pont has been so indicted 10 times and General Electric 11 times. An individual indicated that many times would be considered a chronic offender and given a lifetime sentence.

Senator O'MAHONEY. If convicted.

Mr. QUINN. If convicted. No. 6:

Placing legal limits on size would discourage competition—it is said.

Price competition has already largely disappeared among giant corporations. A limitation on the size of General Motors and Ford would give the other manufacturers a better chance to exist. We might then be assured of the continuance at least of the present six, and could even expect new ones to enter the industry, which is hardly possible under present conditions. There hasn't been a new entry into the automobile business since 1923, except Kaiser-Frazer, without exception.

For all practical purposes the industry is today closed to any new-comer no matter what his ideas, plans or means. Many mergers are arranged largely for the purpose of limiting and restricting price competition. Reasonable limits on size would most likely tend to encourage, not discourage, competition. For every giant which was restricted, scores of others could be given new life. This new freedom among manufacturers would open great new avenues of distribution that have been closing up in recent years.

(7) It is said:

Any limit on size would interfere with the freedom of consumers to buy goods of their own free choice.

It is difficult to understand why this argument, like the others, would be advanced by anyone not in the employ of the special large interests. The choice of consumers today is overwhelmed by mountains of advertising. Anyone who is honestly worried over consumers' choices should think as well that they might like to buy an entirely new car or other product which no manufacturer is today producing or may ever get an opportunity to produce.

Maybe the consumer would like to be assured that Packard, Studebaker, Willys, Nash, Hudson and Kaiser cars will be permitted to continue and that their resale values will not be depreciated by those who control the resale markets. For want of limits on the size and power of General Motors and Ford, the smaller companies must face further mergers or their probable elimination—going the way of scores of others whose passing disappointed countless consumers for whom no crocodile tears were shed.

Senator O'MAHONEY. How do you define the limitation on size which you have in mind? Is it a limitation on the capital?

Mr. QUINN. If you will let me finish, it is only two pages later on, Senator, that I discuss that, and I think it will fit in there, if that is agreeable to you.

Senator O'MAHONEY. It is, indeed.

Mr. QUINN. No. 8:

The giant corporations have greater creative ability and potentiality.

That is a claim that is constantly made, and I think without substantial support, that is, that the giant corporations have greater creative ability and potentiality.

Mr. H. Stafford Hatfield, in his excellent book, *The Inventor and His World*, states:

It is frequently said * * * that advance in the future will come exclusively from the magnificently equipped research laboratories of the great trusts and corporations. There is no evidence of this except the ipse dixit of the corporations themselves.

Mr. Hatfield lists the following inventions which have not come from great research laboratories but from the independent work of individuals: monotype, case hardening of steel, photogravure, moving pictures, the dial telephone, diesel engines, carborundum, the telegraph and telephone, electric-train control, submarines, safety razors, airplanes, bakelite, gyrocompass. He adds:

The very latest example of the victory of individualism in invention is television, worked out by a young Scotsman with the slenderest of resources in a cellar in Soho.

We might add to that an even later one, the development of the Salk vaccine, which did not come from a giant corporation.

I thank goodness that the Infantile Paralysis Foundation was not so enamored of this big research idea that they would take all of their funds and put it in some one giant corporation. They were wise enough to distribute it around among numbers, and it is from numbers and from the democratic idea and from independence that creative original work comes.

Truly basic and important inventions are generally the work of individuals far enough away from giant organizations to have perspective and an independent viewpoint. The inventor of the power loom was Cartright, a minister. The inventor of the sealed compressor, now universally used in refrigerators, was a French monk, the Abbe Audiffren. Janney, who invented the automatic railroad coupler was a farmer, not an engineer. A bookkeeper, Eastman, introduced practical photography. Colored photography was the work of two musicians, Mannes and Gadowsky. Invention comes from independence and numbers and democracy, not from superorganization and dependence. It thrives on freshness of viewpoint.

In the electrical-appliance business, where I have had a lifetime of experience, not a single product now in use—lamps, refrigerators, washing machines, vacuum cleaners, fans, irons, broilers, ranges, shavers, mixers, dishwashers, et cetera—there are 36 of them in all—not a single one of them was ever created or invented by any of the giant corporations in that field—General Motors, General Electric, Westinghouse, or any other. This is a significant, vital fact, but since it controverts the mass-advertising impressions which the giant companies wish to leave, we may never expect the public to know of it through any advertising-supported magazine or newspaper.

Senator O'MAHONEY. In the field of the automotive industry, do you know how many original inventors sometimes survive individually or through their progeny—

Mr. QUINN. I do not.

Senator O'MAHONEY (continuing). As capitalists in control of the manufacture of the motors?

Mr. QUINN. I do not know.

Senator O'MAHONEY. Is it not a fact that most of them have disappeared completely?

Mr. QUINN. Oh, perhaps I misunderstood you. I thought your question was directed to the point of whether the invention came originally from individuals or from the corporations after they were organized.

Senator O'MAHONEY. No. I think that Olds, for example, really made no money out of his invention. He gave a name to a car in the combination.

Mr. QUINN. I think the inventor who makes any money out of his invention is an exception.

Senator O'MAHONEY. I would not be surprised if Ford were not the only one.

Mr. QUINN. It may well be; I do not know.

For the most part the record of the giants is one of moving in, after the fact, absorbing, merging, buying out or copying smaller competitors, after a product is proven. Theirs is a financial initiative.

The prosperous patent lawyers of the country have become so mostly through opposing the patents of the little fellows, in behalf of the big ones. That is where the money is, if not the place to which we may look for creative work in the future.

I come now to some proposals facing us.

Facing the giantism issue, we might well begin with the introduction of a maximum free enterprise—for the greatest number—bill. It would be designed to open new opportunities to thousands, tens of thousands, of companies and restore economic freedom in many fields that are now practically closed. This would be done by limiting and restricting oversized corporations.

(A) Industries could be classified for the purposes of the legislation, much as they are now classified by the Department of Commerce.

(B) Any concern with, say, \$100 million or more in net worth—I think that answers your previous question, Senator, I use the net worth figure—could be declared to be in a special group which for reasons of sheer size and power are affected with a special public interest. (Exceptions in such industries as steel and automobiles, where larger capital is required, might be allowed. Such companies might be permitted to reach, say, \$200 million or \$300 million—I have not examined that too carefully—in net worth before being classified in the special group.)

(C) Income-tax rates on the companies that exceed the maximum indicated size could be gradually but reasonably graded upward.

(D) These companies would not be permitted to purchase, merge, or absorb other companies.

(E) Officers and directors of these companies would not be permitted to serve as officers or directors of any other concerns or corporations.

(F) These companies would be required each year to publish detailed profit-and-loss statements and balance sheets on each department of their total business, according to the industry classification provisions.

(G) Any company could remove itself from the oversize class by decentralizing into separate companies, of its own free will and in the way it chose.

NOTE.—Such exceptions as the Congress may decide on public utility, railroad, bank or insurance companies that are otherwise regulated could be considered.

I offer these suggestions only as an indication of one way we could proceed to free the economy from the dangers of giant private corporate power. The results might also be accomplished by requiring all corporations doing an interstate commerce business to take out a Federal charter and then place the desirable limitations in the charters, as the chairman has often suggested.

What we seek to accomplish can be done. Only wide spread information on the subject and the will to act is missing.

It will be recalled that there is a precedent in principle for this kind of action in the Public Utility Holding Company Act of 1935. The cry went up at that time that the act was a "death sentence." Instead, the public, the investors, and the companies themselves all benefited. We could expect similar results from an effective maximum free-enterprise act.

Senator O'MAHONEY. This prompts me to remark, Mr. Quinn, that when the Department of Justice years ago in the early years of this century, filed a lawsuit against the Standard Oil Co., the only Standard Oil Co. of the time, on the ground that it was violating the law, and the Supreme Court in its decree ordered the dissolution of the Standard Oil Co., the result was only that the segments into which it was dissolved, each in very short time became greater than the original trust. Many more stockholders came in; the petroleum industry as a whole vastly profited as a result.

That is one reason why I have never regarded a dollar figure as a reasonable rule of limitation. I would rather limit the predatory power by which control is expanded.

I cannot see far enough into the future to know how great a single corporation may have to grow in order to serve the people honestly and properly.

The national income has been growing by leaps and bounds, and with the growth of the population it is likely to grow even greater if we continue maximum full employment.

Therefore, legislation which would curtail the practice of stockholding companies by which a single small group concentrates what are really personal holdings into a corporation, thereby getting the advantage of the lower corporation tax instead of the higher individual tax, would be prohibited and, by which, as a result, the power of such holders to expand would be prevented.

Under the present tax law, with the individual taxpayer paying a very much larger proportion of his income in tax to support the Government in its efforts to preserve peace, he is penalized as compared with the corporate stockholding company by which individual stockholding dividends are covered by the corporate tent, and get at the maximum only a 52-percent tax, whereas the upper brackets in the individual tax go much higher.

That single fact promotes the expansion of economic control by small groups.

Have you given consideration to that?

Mr. QUINN. Senator, the river is overflowing. We are faced here with an imminent and, I think, a very dangerous situation.

It is a commendable thing, of course, to want to pass legislation so enduring that it never needs change.

Senator O'MAHONEY. Well, that cannot be done.

Mr. QUINN. But we cannot do that.

My disposition is to run sandbags up quick if we can, and to stop the deluge, and even though later we may get to something more fundamental in the formation of legislation that will put us on the right track.

I want to, if I may just finish—I am quite close to the end of what I have to say—I wanted to add that I am conscious of a growing sense of futility, not only among the people of my generation, but among the youth of the country who, for the most part, can look forward only to subordinate positions in giant corporations, where they must cater to will or whim of artificial superiors, not of their selection.

The frustration is chargeable very largely to swelling economic power, superorganization.

I meet these young people as a visiting lecturer in the colleges, and I feel deeply for them.

To the extent that economic power is being concentrated in fewer hands, in huge corporate enterprises, the individual no longer has a responsible share according to capacity in forming and directing the activities of the group to which he belongs.

Thus, a mainstay of democracy is violated because in a sense that is a definition of democracy.

Control over the means of production has the effect of violating democratic principles as much as any means of physical force.

To exercise power of any kind over people deprives them of that much participation and responsibility, and irresponsibility lowers all standards and values.

We find here an important explanation of growing delinquency and the alarming national crime rate.

The National Council of Churches of Christ in the United States recognizes in its recent six-volume study of Christian ethics and economic life, which I have read, that we have reached a crisis in human values, integrity, decency, and justice.

But it has not yet been generally realized that these deplorable results are due, in large part, to economic superorganizations, and the growing impersonality of an overly acquisitive corporate society.

And finally, if I may be allowed 3 or 4 minutes, because this concludes my statement, I want to comment on my presence here today and my testimony.

The press has generally been quite fair in its reports, perhaps you have noticed, but certain journals and journalists of opinion have broadcast personal attacks upon me.

Now, I am not so naive as to believe that I am personally that important. What it means to me is that an attempt is being made by spokesmen for giantism and monopoly to discredit investigations or studies of this kind, and to direct attention away from the real issues.

It is often a growing sign of weakness and fear to remain silent in the face of charges and attacks, and then resort to personal abuse.

The published claim is made that I wrote a book many years ago, including statements that are not consistent with what I currently believe. Actually, my basic philosophy has not greatly changed since I left giant business.

May I urge those who quote from the attack upon me, and it has been quoted in certain publications, the attack made upon me by the gentleman from Tennessee, Mr. Carroll Reece, and spread over eight pages of the Congressional Record, may I urge that in all fairness that they also read my reply, which is also in the Record.

I cannot claim to have learned nothing in the past 15 years before, during, and after the war that has changed the world.

The charge of inconsistency goes back to a book written in 1941 and published in January of 1943.

Having made a study of my writings, speeches, Mr. Reece, in effect, finds nothing inconsistent in the past 15 years, but he thinks in this old book he has something.

I was at that time in the advertising agency business, having previously voluntarily resigned my various official positions in the General Electric Co.

I was still under the spell of giant business to some extent, and not entirely free to speak my mind for fear of reprisals against my associates; not myself. I have never worried so much about myself.

Like so many who are silenced today, I was still hopeful, as I am not now, that the giant corporations would curb their voracious appetites. Today I see no limits.

However, the plan of that old book was to show that neither the extreme of centralization nor the extreme of competition, that is, unrestricted competition, would, in the long run, serve the public interest, and that is the same judgment expressed in the statement I have just read to you. You will also find it in my recent books.

Now, of course, the way to judge any book is to read it, not simply excerpts and sentences for a purpose.

That old book was an attempt to say what could be said for and against concentrated authority, and for and against competition; but my general position is summed up on page 57, and I quote:

In this book—

Senator O'MAHONEY. This is the old book?

Mr. QUINN. The old book.

Senator KEFAUVER. What is the name of it?

Mr. QUINN. Liberty, Employment, and something like that. There have been a number of them, Senator.

Senator O'MAHONEY. Well, you are at liberty, Mr. Quinn, to get the exact title and put it in the record at this point.

Mr. QUINN. Very well.

What I was really doing was groping and thinking out loud and trying to understand, and only partly succeeding.

In this book, I did say:

I am primarily interested in pointing the way through a new American decentralization and teamwork toward the objectives which we can and must meet without trying to blueprint the future.

And this is still my aim.

I have learned to distinguish between merely big business, on the one hand, and giant or monster business, on the other.

Big business, up to a point, is efficient; it gives you lower costs, plant costs, and I know that from experience. But that does not begin to justify these tremendous financial aggregations of capital.

When one sets out, as I have, wholly out of conviction to speak from experience, study, and what knowledge he may glean against dangerous concentrated power, he must expect personal abuse from entrenched interests, and I have not been disappointed.

But I begrudge every diversion from the main to side issues into personalities.

None of us lasts very long, but the questions and the problems go on.

It was first charged against me in the congressional committee testimony that I had not resigned voluntarily from giant business, but was eased out. This was a mean and a deliberate prevarication, easily refuted by signed documents in my possession, and it has been a silent point ever since.

The next charge was that I had done a poor job as director-general of the War Production Drive, a position I took out of duty for a dollar a year after resigning all of my other business connections.

But I was able to quote a flattering judgment in some detail from my then boss, Donald Nelson, in his book, *Arsenal of Democracy*. He did not think I did so poorly.

Congressman Reece next tried to show that I attempted to profit personally from my wartime associations in Washington. He based his case on some old allegations made by former Congressman Jerry Voorhis. Mr. Voorhis has had the great goodness to examine the charges, withdraw them, and publicly commend me and my work.

Now, the charge against me is inconsistency, going back many years. Anything, it seems, is easier than to face the present issue: The curse of concentrated economic power and monopoly.

Thank you; and I am ready for your questions.

Senator O'MAHOONEY. Mr. Seeley?

Mr. SEELEY. Mr. Quinn, are you familiar with the theory of countervailing power which was advanced by Prof. John Galbraith in his book in 1952?

Mr. QUINN. Oh, yes.

Mr. SEELEY. Do you agree with that theory?

Mr. QUINN. Well, it is true that the labor unions, if you please, offer some opposition to the larger organizations of manufacturers, such as the National Association of Manufacturers; and it is true that Sears, Roebuck offers some competition for General Electric and RCA and others.

But I think what Professor Galbraith has projected there is a condition in which there are simply left great big giants opposed to each other, and he forgets the little fellow in between.

I think he also neglects to consider what, to me, is very important, that we want to preserve as much competition as we can between companies within reasonable size, and it is because I want to see that healthy competition preserved, that free enterprise, the maximum of it, not just the free enterprise for the big capital fellow, but the free enterprise for all groups under that line—there are tens of thousands, hundreds of thousands, of them—where you are dealing, on the other hand, with only a handful of the giant corporations.

So, I should say, in part, I recognize Professor Galbraith's doctrine, but I think it does not come up to my expectations of projecting the kind of society I want to live in.

Mr. SEELEY. Then you do not think that the protection of the public welfare can be left to this counterbalancing of the economic forces exerted by various large interest groups?

Mr. QUINN. Oh, no; because it would just end up with a lot of giant companies opposed, perhaps, to each other, but a relatively few. Where do the rest of us come in? Where is the competition that brought us to where we are?

Mr. SEELEY. I want to quote a short passage from a recent book of David E. Lilienthal, entitled "Big Business"—

Senator KEFAUVER. I did not understand who you were quoting from.

Mr. SEELEY. The book of David E. Lilienthal, entitled "Big Business, a New Era."

The quotation is:

One of the attractive aspects of modern big business is that it creates opportunities previously nonexistent for multitudes of small-business enterprises, and broadens the area wherein smaller businesses can find opportunities that are neither profitable nor suitable for the big ones.

Mr. QUINN. If he means—

Mr. SEELEY. Would you comment on that?

Mr. QUINN (continuing). If he means that when—David Lilienthal, by the way, is a good friend of mine, and I am familiar with his book—if he means by that that a new manufacturer, for example, in the automobile field would give rise to a number of dealers and a distribution outlet, I think that is true.

But I should expect that that would be very much more than offset by the fact that in a closed group, such as the automobile business is now, there is no opportunity for new manufacturers to enter.

If 10 new manufacturers could come into the automobile business, and each of them have a billion dollars' worth of business, you would give infinitely more rise to independent business than you would under the present system, because those 10 companies would have to have dealers of their own, and instead of very large General Motors dealers there would be many smaller dealers of these various new car manufacturers.

Mr. SEELEY. You were here yesterday, Mr. Quinn, when Prof. Corwin Edwards was being questioned, and you may recall a letter that was quoted to him from a book by Peter Drucker called *The Concept of the Corporation*, and the passage quoted was this:

My point was that what big business possesses is not a physical superiority but a managerial superiority. The physical job of production could in many cases be done fully as well in a small unit. The managerial, intellectual, and theoretical job of planning for this production, or interpreting and coordinating it, could not, I maintain, have been done without the leadership and experience of big-business management.

Would you care to comment on that statement as to the managerial superiority of big business?

Mr. QUINN. That strikes me as being very much theoretical.

Let us imagine that tomorrow General Motors merged or took over General Electric and United States Steel.

What really would happen? The president of United States Steel would become an executive vice president of General Motors; the president of General Electric would become an executive vice president in charge of that division; then it would become a division.

Now, everybody would go back to work the next morning much as he has always done. I do not know that there would be any great change except that the letters from the home office would have a different address.

Perhaps some of the present officers of General Electric and United States Steel in the combine I am projecting, perhaps they would, could be, eliminated; I doubt it.

But when Mr. Drucker suggests there that the planning for the production of Oldsmobile cars is done by the head office of General Motors in New York City or by some vast wisdom that is produced there, he is mistaken.

I think there is an unfortunate disposition to glorify the corporation, the large corporation, the giant corporation president. Somehow or other we vaguely associate the man with the dollars of the corporation.

In my experience, I have not found them very formidable. I have found infinitely wiser men in other places, in humble places.

Most of them are the products of circumstances, which reminds me, Mr. Chairman, that in a statement you made, I think, yesterday morning, you referred to the fact that I had been in giant business and changed my mind; very kindly you referred to it by way of explanation.

But what really happened was so natural. I went to work in the nearest factory. I wanted to study law at night. The old National Lamp Works in Cleveland—I did not know that that factory was owned by the General Electric Co. It was not until a Government suit later forced them to divulge that fact, that I found out who I was working for.

In the meantime, I went on up through the company, everything, foreman, traveling auditor, credit manager, sales manager, a manager, a vice president, a chairman, and so on, and I was so enamored with what I was doing, so completely occupied, I had no time to read much of anything else—the newspaperers, perhaps.

I was no student or scholar of anything, nor did I have time to be. Even though I had been studying law in the meantime, and was encouraged in mental intellectual activity, that was the situation.

Now, I think that is what happens actually with most of our big-business people. They grow up naturally, normally under those circumstances, and then they find themselves defending something that they have never really thought very much about.

They defend it because what they are really doing unconsciously is defending their jobs. They are not defending a system. They have not really thought about the system.

If you could take the average businessman, big business corporation official, and question him for any length of time on the United States of America, its history, its Constitution, its laws, its relation to the world, I think you would be quite disappointed in his knowledge of those very important things.

That is a long answer.

Mr. SEELEY. Thank you, Mr. Quinn.

Senator O'MAHONEY. It is a very clear one.

Mr. SEELEY. Mr. Quinn, I do not think you were here yesterday when Mr. Burns delivered his opening statement. One of the purposes of this inquiry is to consider the extent to which General Motors' giant size affects competition in industries other than the automobile industry, where it is a major producer of many other important products.

Now, you were the head of the refrigerator division of General Electric; were you not?

Mr. QUINN. For a while; yes.

Mr. SEELEY. In that capacity you were confronted with competition from the Frigidaire division of General Motors?

Mr. QUINN. Yes. Such as it was.

Mr. SEELEY. Could you tell us what impact it had or what that impact was upon your company?

Mr. QUINN. Well, General Motors had started out in the electric refrigerator business. They had purchased the old Isco Co., that is where they got their start, as most corporations, big corporations, get started, within my observation in any field.

The General Electric Co. had been making a machine, a refrigerator, of commercial size for an English company, and it, of course, felt that General Motors was infringing on its field when it stepped out of the automotive-business industry into the electrical industry, so General Electric then decided to go into that business.

I had had some experience in the lamp department, and anyway they picked me to do this job, and we went right out after it; unlimited funds, just "Get up there," just "Get the business."

I think in the second year we did a business of \$50 million, the second calendar year. I do not know that any business ever went that fast, and we made \$7 million of profit.

Then the fight began between us, not the fight at the top, if you please, but the fight down the line, and the boys running these divisions, Mr. Beichler of Frigidaire at the time, and myself for General Electric, we started to cut prices against each other.

I remember going down to Pittsburgh, and every time they would reduce the price, I reduced it further; finally we got to giving it away, and I knew it would not last very long until we got the call from New York, and I was to meet with Mr. Sloan and Mr. Swope and other people.

We went down to New York, and out of it grew an association which was to—Mr. Sloan advised us should not be a big association, don't try to get a lot of people together, get 3 or 4 people together until you can reach an understanding, and then we will have harmony, and so on, in the industry, which we proceeded to do.

Am I answering your question?

Mr. SEELEY. Yes, sir.

You referred to Mr. Alfred Sloan, chairman of the board of General Motors Corp.?

Mr. QUINN. Yes, sir.

Senator O'MAHONEY. Mr. Seeley, may I interrupt?

Mr. SEELEY. Yes.

Senator O'MAHONEY. I am just wondering how the witness defines that word "harmony"?

Mr. QUINN. Well, harmony is a condition, Senator, for the purpose that I meant it, under which nobody talks about prices, but everybody understands. [Laughter.]

Senator O'MAHONEY. There is no paper curtain there.

Mr. SEELEY. Will you fix the dates of those conferences for us?

Mr. QUINN. Oh, this was way back.

Mr. SEELEY. Approximately?

Mr. QUINN. Way back, I should say, about 1930, around 1930.

Mr. SEELEY. Was there at that time any genuine price competition between General Electric and Frigidaire division of General Motors?

Mr. QUINN. Well, as I say, we had an understanding without talking about it, and as long as we each held our percentage of the business, we did not go out after each other. Why would you? I mean, when you are in that position? The object of a business is to make a profit, and so, of course, you reach an understanding with the big fellow.

If the little fellow gets obstreperous, why, you have a meeting, and you go up and tell him, you put your prices on the board, or we did then, and he is allowed, if he has not the means to advertise, you allow him maybe a 5 or 10 percent differential, but if he gets under the 10 percent, you go up and say, "Why, I just changed my prices," and you put up your new schedule, and pretty soon he understands what differential will be allowed him, and accordingly he announces his prices.

Senator O'MAHONEY. Sort of an allocation?

Mr. QUINN. Yes.

I do not know that they do it the same way today; that was a long time ago. But the effect, the result, is similar.

Mr. SEELEY. You had an opportunity to learn at firsthand the philosophy of business of Mr. Sloan and Mr. Beichler, the general manager?

Mr. QUINN. Yes, of Frigidaire, yes. I got to know the executives of General Motors, particularly Mr. Sloan, and I knew John Pratt.

Mr. SEELEY. You got their views?

Mr. QUINN. Mr. Wilson, I knew only slightly.

Mr. SEELEY. You learned the views of the company?

Mr. QUINN. Mr. Sloan was a very interesting man to me, a very fine man. They all are.

I should say that he was—he knew his Adam Smith and he knew his John Stuart Mill, and I think he believed in the survival of the fittest, and I think he was persuaded in the heart of him that out of that philosophy would come the best results for the world.

I do not believe that he would endorse the trend in recent years to what we might call the welfare provisions of what we are undertaking, because they are not altogether consistent with the philosophy of the survival of the fittest.

But he has established the Sloan Foundation, which so many other men of means have done.

I do not know that I would care to say more about that because I do not want to indicate in any way that I do not regard Mr. Sloan highly, even if I may think that he, like myself and everyone else, is a victim of circumstances.

Mr. SEELEY. Mr. Quinn, in your prepared statement, you say on page 6 that General Motors could at will enter any field it chooses and become even more industrially dominant.

Is there, in your opinion, any economic limit to the size which General Motors could go to?

Mr. QUINN. I do not think so.

We used to believe, you know, in the field—the economists who are always behind the fact or, perhaps, I should say who are so often behind the fact, had a feeling that you would reach a limit beyond which your savings in costs and so on would catch up with it.

I think that has been entirely disproved, and the more advanced—at least those that I regard as more advanced—among them recognize it, that there is not any limit, there is no limit.

If the Congress of the United States is not going to do something to curb these giants, there is nothing except their own restraint or public opinion to stop them. They are just going to go on, and there is not any limit, and General Motors, for example, has shown us when they stepped into the earthmoving-equipment business in anticipation of the roadbuilding program, that they intend to continue and go on.

There is no limit; and you can combine corporations in the manner that I indicated a moment ago when I projected a merger of General Electric and of United States Steel with General Motors.

Well, you say, that is preposterous now. Well, yes, but we are looking at mergers today that we should have regarded as preposterous 20 years ago. So I think there is no limit.

Senator O'MAHONEY. Well, when you have the growing accumulation of profits under a corporate structure by which the profits in certain divisions may be concealed from the published record, by which losses for the purpose of invading a new industrial field can be absorbed, is it not true that unless Congress does somewhere draw the line, the inevitable result will be complete concentration?

Mr. QUINN. I should envision that exactly, Senator.

If I were to start out in business today, in some enterprise, where a risk was involved, and I invested \$1 million, if I had it, and lost it, I would lose the whole of it.

But if a giant corporation invested the same \$1 million from its profit, and simply took it out of some concealed departmental figure and invested it, it could charge it against offsetting losses within its own organization.

Senator O'MAHONEY. It is commonly said that those who own 25 or 30 percent of the stock of any large corporation actually control its management; is that true?

Mr. QUINN. I should think the larger the corporation, the less the percentage of stock interest you need to control it, because the more widely dispersed it becomes.

I should think in the case of General Motors I would expect that Du Pont, with 23 percent, I think it is, could easily control it.

You remember in the Standard Oil of Indiana case where it was sought to eliminate a president or a chairman, I have forgotten which, who was in some trouble, the Rockefeller interests, I believe, had only 17 percent of that stock, but they were able to consummate their program.

Senator O'MAHONEY. I had a very interesting personal experience in that battle which might lighten the atmosphere a little bit if I should tell it.

Standard Oil of Indiana had some stockholders in the State of Wyoming.

The president, Mr. Stewart, had been running that corporation much as he pleased. It became involved at this time in the organization of the—well, I will not name it because I might be naming the wrong company—but the heads of certain oil companies, oil refining companies, formed a corporation to purchase the oil from a Texas field, the owner of which was so wealthy he did not want to be bothered in making a great number of contracts, and he wished to sell his production almost as a unit.

So these presidents of various oil companies, trustees for their companies and their stockholders, formed a new corporation—it was a trading company, they called it—and they purchased the oil from the big man in Texas, who had discovered a new field. They purchased it at \$1 a barrel, and the corporation that they formed resold it to their respective refineries at a dollar and a quarter a barrel, and the presidents of the various refining companies put the extra 25 cents a barrel in their pockets.

Now, that was the case that came up around about the time of the Teapot Dome scandal, and the fight went on, when Rockefeller moved in and said, "This scandal is too great a scandal to be permitted. We must remove Mr. Stewart as president of the Standard Oil of Indiana."

So all of the officers of all of the subsidiaries of Standard of Indiana were sent out by President Stewart to garner in the votes of the

stockholders so that Stewart could not be put out, and Rockefeller did the same thing.

So one of the officers of one of these companies, whom I knew very well, approached a citizen of my State and sought the proxy on the side of Mr. Stewart.

As it happened, however, the stock was in the name of this stockholder's wife, and after he had had the conference and promised to vote for Mr. Stewart, he went home. He told his wife how they were going to vote, and she said, "I am sorry"—mentioning him by his first name—"I have already voted for Mr. Rockefeller." [Laughter.]

Mr. QUINN. Can we finish up in the next half hour?

Mr. SEELEY. Yes. In view of the advancing hour, I have just one or two more questions. Under your alternative proposals which you advanced at the end of your prepared statement, you recommended the classification of corporations according to net worth. Did you mean that you would favor imposing limitations upon the further growth of large business organizations regardless of manufacturing costs and efficiencies?

Mr. QUINN. No, no. All I said there is that I would say beyond a certain point—and I do not care whether it is \$100 million, I am simply selecting that figure—I simply selected that figure—that I would say beyond a certain point a capital aggregation is affected with the public interest. Surely we have learned that now in the past 25 years.

Being affected with the public interest, we are going to subject it to these conditions, not limitations, to these conditions: It pays a higher tax; it may not buy other companies, it may not have officers and directors associated with other companies.

I am not limiting anybody in that sense; I am simply making it to their interest to decentralize when they get beyond, get into the giant class and become threatening to our institutions; all with a purpose of creating more free enterprise for more free people instead of so much concentrated enterprise, free enterprise for so few.

Mr. SEELEY. The question has arisen about this phrase "economies of scale" which has been used frequently, Mr. Quinn. Prof. George W. Stocking, in his testimony before the Joint Committee on the Economic Report on February 1 of this year, stated that if we wished to preserve a free-enterprise economy, the public policy should be directed toward insuring as many firms in an industry as is consistent with the economies of scale. However, Dr. Joe Bain, of the University of California, in an article in the *American Economic Review* for March 1954, arrived at the conclusion that the so-called economies of scale, or of bigness, are problematical and generally unimportant.

He stated as a result of his study that in half the cases in which definite estimates were received, such economies were felt to be negligible or absent, whereas in most of the remainder of the cases they seemed slight or small.

From your experience, would you say that the represents the correct view?

Mr. QUINN. Well, as I tried to indicate a while ago, economies usually consist in lowering costs, and you can easily get lowering costs if you have the power by imposing lower prices upon your suppliers.

Moreover, you will find that the people who have something to sell are so anxious to get your business in any field that they give big

discounts out of proportion to any saving in costs which the Robinson-Patman Act was aimed at.

Let us take an illustration of what I am talking about. If 3 or 4 independent people in the automotive field wanted to run 52 advertisements in *Time Magazine* or *Life*, they would have to pay the price for each of their separate companies, which is a higher price because they would each get fewer ads.

But if General Motors wants to buy 52 ads or some X number of ads in those same magazines, the price schedule is set up—and I think and I hope this is not unfair—is set up very largely in favor of the very big corporations—it will get the lower price on all the divisions.

Now, you can say that is an economy. But I think it is purely an arbitrary allowance of discount. It favors the big fellow primarily again, I think, because of his market power.

Senator O'MAHONEY. Mr. Seeley, I think that in view of the witness' request at an earlier time for an early termination, and in view of the fact that he has been a very interesting and very responsive witness, in opening up interrogatories which you are now propounding to him, and which are opening up a new field, we might call this to a termination now, with the understanding that if we desire to call him back later on he will be willing to come or that if you desire to write out some further questions—I see you have a lot to cover—we may submit them to him in writing and he may answer them to be submitted to the committee.

I know it is important that we should take another step in this meeting before adjournment, and it is now 10 minutes after 12.

Mr. Burns, will you now state what the program is to be?

We thank you very much, Mr. Quinn.

Senator KEFAUVER. Mr. Chairman, may I just ask Mr. Quinn one question about a matter before he leaves?

Senator O'MAHONEY. Yes, of course.

Senator KEFAUVER. Mr. Quinn, you have talked about size as not necessarily being efficiency and not necessarily being in the public interest.

Do you, of your own knowledge, have any information or can you tell us anything about larger companies withholding advanced or new products from the market for the purpose of selling their older ones or preventing no logical advancement?

Mr. QUINN. The only example I have any personal knowledge, and that not too distinct, was in the General Electric Co. with respect to the fluorescent lamp.

Senator KEFAUVER. That is what I wanted to ask you about. Do you know about that personally?

Mr. QUINN. Yes. I was there at the time.

Senator KEFAUVER. Mr. Chairman, would it be in line—I think that is a very important point that he personally, he alone, could discuss—I have heard this story around for years and years, and I never have gotten it from the horse's mouth, so to speak. Could I be permitted to ask him about it?

Senator O'MAHONEY. It is important, I think, that we proceed with a schedule that has been prepared.

There are certain other witnesses to come. The Patent Subcommittee is going into that matter, and we will be very happy to have

you present in the course of the study of the patent system. We will go into that then, if it is agreeable to you.

Senator KEFAUVER. Could he make a brief summation of it now without going into detail?

Senator O'MAHONEY. Yes, if he will.

Mr. QUINN. It would be very difficult to document at this late date because this goes back many years, Senator, but my recollection of it is simply this—that the fluorescent lamp was a more efficient lamp in that for the same input of electricity you got very many more lumens of light, and the electric light and power companies, who were anxious to sell power, were concerned, as I remember it, were concerned over the widespread use—they did not know how widely fluorescent lamps might come into use—and they feared that all lighting would tend, would move over, to the fluorescent, in which case there would be a very substantial reduction in their revenues.

Therefore, there was talk and pressure and conversation about it at the time that, I think, did have the effect of retarding or slowing the speed of the development, until it was pretty well established that the fluorescent lamp was going to have its place, and that it would not entirely supplant the ordinary incandescent lamp.

Senator KEFAUVER. Well, was it not held back from the market by General Electric for quite a long time, even though they knew it was technically an advancement and better for society? You were there, you know.

Mr. QUINN. Yes, but it is very difficult to say that, Senator. The only one I can imagine who would give it to you, say, "Why aren't we out with the fluorescent lamp?" and you have got an engineer there in charge, the man at that time was named Pritchard, he alone was the only one—dealing with him alone you could have retarded the development, because he could have said, "Well, we are not ready for it yet," and there would be nobody to question his statement, because he was the expert in charge.

His simple statement was, "We are not ready for it," and it would answer the simplest question.

So it was in development over a long period of time, but whether that time was actually required to perfect it or whether it was a deliberate retarding or slowing up of the development, would be very difficult to establish.

I should think, unless you called in the people in the incandescent lamp department of the General Electric Co., and interrogated them and, particularly the man in charge, and he would almost have to be under oath, I suspect, to get the truth from him.

Senator KEFAUVER. What was your position with General Electric at that time?

Mr. QUINN. Let me see. I think I was assistant manager of the National Lamp Works in Cleveland, Ohio. I believe that was my job at the time.

Senator KEFAUVER. Thank you, Mr. Chairman.

Senator O'MAHONEY. Mr. Burns?

Mr. BURNS. The subcommittee will now call witnesses from among the manufacturers of diesel locomotives. This industry is comparatively new, having developed during the late 1920's. Today practically every railroad in the United States is completely dieselized, and since 1946 more locomotives have been produced for use in this country

than during any other comparable period in history. General Motors entered the field during the formative stages, and produced its first over-the-road diesel locomotive in 1934. Its production and share of the market have grown until it now produces approximately 76 percent of all of the diesel locomotives used throughout the United States. It also is heavily involved in the foreign field. Its closest competitor, which has been in the locomotive business since 1901—through steam and then diesel—has at the present time only approximately 15 percent of the market.

The purpose of the hearing will be to attempt to determine what factors are responsible for the phenomenal growth of General Motors in this field and its ability to capture such a large share of the market in such a short period of time. We would also like to determine the economic effects on the industry and upon the American economy of General Motors' accomplishments in this field. It is obvious that the historical producers of locomotives are losing ground and that General Motors each year is acquiring a larger share of the market.

We expect the witnesses who shall appear today to furnish us with some of the underlying reasons and the effect of such tremendous changes in the industry upon the railroads and upon the entire economy.

We would like to first call Mr. V. H. Peterson, vice president of Fairbanks, Morse & Co., and I would like to have Assistant Counsel Gareth M. Neville question him.

STATEMENT OF V. H. PETERSON, VICE PRESIDENT, FAIRBANKS, MORSE & CO., ACCOMPANIED BY ROBERT B. CRAIG, VICE PRESIDENT; AND ANNAN RAYMOND, COUNSEL

MR. NEVILLE. Would you identify your party for the record?

MR. PETERSON. I am V. H. Peterson; this is Mr. Raymond, counsel; and this is Mr. Craig, our Washington representative.

MR. NEVILLE. Mr. Peterson, what is your position with Fairbanks, Morse?

MR. PETERSON. I am vice president of Fairbanks, Morse & Co., and in charge of the locomotive end, railroad end, of our business.

MR. NEVILLE. You are an engineer by profession; are you not?

MR. PETERSON. Well, I am a graduate engineer, although most of my work since graduation has been in the sales or commercial end of the business.

MR. NEVILLE. Will you describe for us the Fairbanks, Morse position in the electric-diesel field today, please?

MR. PETERSON. Well, today our company—may I go back and say a few words about the background of our company?

MR. NEVILLE. Yes; if you please, Mr. Peterson.

MR. PETERSON. We were founded and started in 1830, and incorporated as Fairbanks, Morse in 1890.

Senator O'MAHONEY. In what State were you incorporated?

MR. PETERSON. Illinois. Our headquarters are in Chicago.

We started in the engine business before 1900. We built some gasoline engines. We built our first semidiesel in 1912, I believe it was, and our first full diesel in the early twenties.

In the early thirties, with our own engineering talent, we designed a type of engine, a two-cycle engine, opposed piston type of engine which,

in the early thirties, the Navy became quite interested in, and during the thirties we became one of the principal suppliers to our Navy of this type of engine, used mostly in the submarine fleet, in the building of the submarine diesel electric drive type of submarine.

However, when we first conceived this diesel, we had in mind the locomotive market. We were delayed using it in locomotive design, although in 1939, I believe it was, we did furnish a few of the engines for that type of power for our railroads. However, the war came on, and all of our output of this engine was taken by the Navy principally for the submarine fleet.

So actually we did not start in the locomotive business as such until 1944 when, while the war was not over, we were able to get enough materials approved to build our first locomotives in 1944.

Our position in the market today, I believe we are getting, between 7 and 8 percent of the available business.

Our company does its—it is a small company or at least in this general atmosphere here, we do a little over \$100 million a year sales.

Mr. NEVILLE. Your company is involved in sales other than the diesel locomotive; is it not?

Mr. PETERSON. Yes. The locomotive end of our total business is, perhaps, 15, 20 percent of our business, and we build pumps or scales; and scales was the start of our business back in 1830.

We build other types of diesel engines than the type used in locomotives. We do large diesel engines and small ones. We build electrical machinery, electric motors, and generators, and pumps, as I mentioned.

Mr. NEVILLE. Mr. Peterson, I show you a tabulation of the respective position of the various manufacturers of the diesel locomotives today.

Mr. PETERSON. Yes. This is a tabulation which we keep as a part of doing business. It shows locomotive orders placed by domestic railroads from 1944 up to the present time.

Mr. NEVILLE. This is headed, "Locomotive Orders Placed by Domestic Railroads (Source: Railways Age and Fairbanks, Morse)."

Mr. PETERSON. That is correct.

Mr. NEVILLE. This is taken from your own records and the magazine Railway Age?

Mr. PETERSON. That is correct, so far as we know.

Mr. NEVILLE. This shows that you presently have 698 locomotives in service as of today; is that correct?

Mr. PETERSON. No; we have more than that.

Mr. NEVILLE. You have additional copies of that; do you not?

Mr. PETERSON. Yes; we have.

Mr. NEVILLE. Could we have some more?

Mr. PETERSON. Total number of units in service—we did not total them—you see these are given by years.

Mr. NEVILLE. You say you started in the locomotive business in 1944?

Mr. PETERSON. We actually built our first locomotives in 1944.

Mr. NEVILLE. Can you give us by years the percentage of the market that you have been able to service?

Mr. PETERSON. Yes; it is given on this sheet here, percent on horsepower basis.

It started, the first year, we just built three locomotives, and the percentages 0.32 that first year; and each year here successively we have a percentage given on the sheet. Do you want me to read them?

Mr. NEVILLE. Yes, would you, please?

Mr. PETERSON. Well, starting in 1944 it was 0.32; in 1945 it was 1.94; and then the next year 3.54; 8.88; 5.27, 4.80, 5.13, 3.56, 5.18, 6.16; and then the last year, 1954, it shows 7.32 percent; and so far this year up through October 20th, 7.33 percent.

Mr. NEVILLE. What was the position of General Motors in this field when you entered, percentagewise of the market?

Mr. PETERSON. Well, again, referring to this tabulation, in 1944 they were getting 58 percent.

Mr. NEVILLE. What is it today?

Mr. PETERSON. Well, today, for last year, according to these figures, it was 77.65, and so far this year up through October 30, was 76.62 percent.

Senator O'MAHONEY. Mr. Neville, may I interrupt? I find from looking at this chart, Mr. Peterson—

Mr. PETERSON. Yes, sir.

Senator O'MAHONEY (continuing). That the following producers are mentioned: Alco, Baldwin, Electro-Motive, Fairbanks, Morse, and Lima-Hamilton.

Mr. PETERSON. Yes, sir.

Senator O'MAHONEY. I note that in the last line it shows that beginning with the year 1944 the total number of units produced by all the manufacturers mentioned was 744?

Mr. PETERSON. Yes, sir.

Senator O'MAHONEY. And that that number of units grew steadily during the years, from 1944 to 1954, when the total number of units was 1,024, but that was not the maximum during the period?

Mr. PETERSON. No.

Senator O'MAHONEY. The maximum appears to have been the number of units manufactured in 1950.

Mr. PETERSON. That is correct, sir.

Senator O'MAHONEY. 4,021.

Mr. PETERSON. Yes, sir.

Senator O'MAHONEY. And the proportion of output by Fairbanks, Morse, while increasing steadily from 0.32 to 7.32 in 1954, was falling behind, relatively speaking, with the output of Electro-Motive, which I understand, to be the name indicating the General Motors production?

Mr. PETERSON. Yes, sir.

Senator O'MAHONEY. Is that right?

Mr. PETERSON. That is correct; that is the Electro-Motive Division of General Motors.

Senator O'MAHONEY. Yes.

Mr. NEVILLE. What were the special problems that you had in this field, in getting the product out to the railroads?

Mr. PETERSON. Well, it is a straightforward selling job. We built some demonstrator units and showed those, and demonstrated them to certain of the railroads and advertised. We did all of the normal things that you do when you try to sell a new product.

Our engine had wide acceptance in the areas in which I have already mentioned, in the Navy—I mean it has been a successful engine there—and in other marine applications. So we did have that background when we started to build locomotives.

Mr. NEVILLE. Were there any special situations due to the dominance and size of the leader in the industry, Electro-Motive, that caused you problems in putting your product on the market?

Mr. PETERSON. Well, of course, they were the leader ever since—I mean, according to this chart they were getting almost 60 percent in 1944; that was a war year and, as I recall it, the Government designated, it seems to me this was so, the Government designated Electro-Motive to build freight roaders.

Baldwin and Alco, as I recall it again, I may be wrong, were designated to build switchers, yard switchers. Of course, the great need, there was a need for both switchers and road power, but the necessities of war required certainly a great many road diesels, large locomotives, that Electro-Motive was apparently assigned to build during the war.

As I say, at that time, we went into the business. We did not build any until 1944, but Alco and Baldwin were, of course, both building.

Mr. NEVILLE. How much freight does your company generate, in round numbers, as compared with the General Motors organization?

Mr. PETERSON. Oh, I do not have that exact figure. But I would think that if we had \$1 million of freight that would be a great deal for \$110 million of sales. It is probably not that much, maybe half a million of it; I do not know.

Mr. NEVILLE. Did you consider that a competitive problem that you have to overcome in selling products to the railroads?

Mr. PETERSON. Well, of course, any large company that builds heavy machinery or automobiles or anything in the class of equipment has tremendous tonnages to move over all railroads, and there is a natural business relationship, I would expect, between the railroads and the builder of equipment or apparatus that the railroad may have use for.

Mr. NEVILLE. Do you feel or have you had any experience in your company that indicated that such a situation might be of great advantage to General Motors and react against you?

Mr. PETERSON. No, I can only assume—I can only assume that such situations may have occurred. I know of no situations of my own information where we have been injured by the weight of, say, General Motors traffic.

Mr. NEVILLE. At the time you entered the market, General Motors was well established?

Mr. PETERSON. Yes; they were.

Mr. NEVILLE. Would you comment about the problems you may have had in getting your product on a line that was already partially or highly dieselized with the products of a competing company?

Mr. PETERSON. Well, there are many railroads that we have never gotten our product on. I mean, there are some railroads that have started with one class of power and stayed with that class of power, still staying with it. We never hope to break in on such a railroad.

We have power on perhaps 40 of the principal class I railroads in the country.

You mentioned numbers of units. I suppose that we have maybe twelve, thirteen hundred locomotive units in operation today, in round numbers, perhaps 40 railroads.

But the problem of selling is like selling anything else. We have problems selling against Baldwin or Alco or Electro-Motive, all of them.

Mr. NEVILLE. Do you feel that the preponderance of the General Motors product on a given road makes it more difficult for you to break into that road?

Mr. PETERSON. Yes; that is so.

Mr. NEVILLE. What about the amount of advertising that your company is able to do as against the type of institutional advertising that a much larger company, such as GM, can engage in? Do you feel that is a difficult problem to overcome?

Mr. PETERSON. Well, we decide among ourselves as to how much we feel that we can afford to spend in our advertising program, commensurate with the amount of business that we might expect to get for a coming year, and that is what we spend.

We spend some of it in institutional advertising and some—most of it—in product advertising.

Mr. NEVILLE. You were, of course, at this time breaking into a new field with your—

Mr. PETERSON. Yes, sir.

Mr. NEVILLE (continuing). Locomotives?

Mr. PETERSON. Yes, sir.

Mr. NEVILLE. Perhaps if you could just tell us the general problems that you had to face as a new producer in this particular market, although an old producer in the diesel line, that might relate to the size—

Mr. PETERSON. I have been selling all my life since I got out of school, and it is hard to explain. But it is just a job of work to do to sell your product.

We believe that there are many features and factors in respect to our product that are better than anybody else's, and that is what we talk about, and we have been reasonably successful.

Mr. NEVILLE. Mr. Peterson, you have mentioned a few moments ago that you had been doing quite a bit of work for the Navy on Navy contracts. Are you still involved in that business?

Mr. PETERSON. Yes, indeed.

Mr. NEVILLE. What is the extent of your business with the Navy along those lines at the present time?

Mr. PETERSON. Well, it is fairly extensive, but I cannot give you actually any figures. Some of it is restricted, so I could not give it to you.

Senator O'MAHONEY. I would like to know a little about the initiation of this work, Mr. Peterson.

Mr. PETERSON. Yes, sir.

Senator O'MAHONEY. You began manufacturing diesel engines for the Navy for ships?

Mr. PETERSON. Yes, sir.

Senator O'MAHONEY. Long before you decided to go into the manufacture of diesel locomotives for railroads?

Mr. PETERSON. That is correct.

Senator O'MAHONEY. How about these other corporations, when did they begin to manufacture diesel locomotives? I ask that question because the table which you have presented shows that the total production of the 5 producers mentioned in 1944 was only 744 units.

Mr. PETERSON. Yes, sir.

Senator O'MAHONEY. Of those 744 units only 3 were built by you, none were built by Lima-Hamilton-Baldwin, a famous old name in the manufacture of locomotives—they had built 164; Alco, a name with which I am not familiar at all, built 213; and Electro-Motive built 364.

How long before 1944, therefore, did the manufacture of the diesel locomotive for railroads begin in the industry at large?

Mr. PETERSON. Well, the oldest diesel electric locomotive that I know of was built and placed in service, I believe, in 1925, Senator.

Senator O'MAHONEY. It was built by whom?

Mr. PETERSON. Well, it is still in operation on the Central Railroad of New Jersey, and it has an Ingersoll-Rand diesel engine in it, and I am not clear who built it. It is just a small locomotive.

Senator O'MAHONEY. I am advised that Alco is an abbreviation for American Locomotive—

Mr. PETERSON. American Locomotive.

Senator O'MAHONEY (continuing). Company.

Mr. PETERSON. That is right.

Senator O'MAHONEY. So that was one of the old builders of locomotive engines.

Mr. PETERSON. Way, way back, sir.

Senator O'MAHONEY. When did they first begin to turn out diesel locomotives, do you know?

Mr. PETERSON. I know they are going to testify here, and they have that information with them. I am sure they have it, but I imagine in the late twenties. But—in the twenties sometime, I am not sure, sir.

Senator O'MAHONEY. When did Electro-Motive get into the field?

Mr. PETERSON. Well, I believe they were starting to do something in the field—I do not think under the name of Electro-Motive at that time—but Winton Engine Co. in Cleveland—I think that is right—and I believe that was in the twenties somewhere.

Senator O'MAHONEY. It was not a division of General Motors at that time?

Mr. PETERSON. No, not at that time, sir; I don't believe so.

Senator O'MAHONEY. You see, the beginning of this chart in 1944, 11 years ago, Electro-Motive had 58.47 percent of the total production of only 744 units; whereas in 1954, last year, its percentage was 77.65.

Mr. PETERSON. Yes, sir.

Senator O'MAHONEY. Meanwhile Baldwin had dropped from 16.74 to 2.57; Alco had dropped from 24.47 to 12.46; but Fairbanks, Morse had increased from 0.32 percent to 7.32 percent.

Mr. PETERSON. Yes, sir.

Senator O'MAHONEY. You were making progress, therefore, while the others were dropping out of the picture. Lima-Hamilton had no production apparently until 1948, when it turned out 16 diesel engines. That constituted 0.74 percent of the total production of that year.

In the following year, 1949, Lima-Hamilton built 27 diesel locomotives, constituting 2.17 percent; and in 1950 it turned out 121 units, constituting 2.48 percent.

Thereafter it dropped out of the picture altogether.

Mr. PETERSON. If I may, Senator, Lima-Hamilton is now a part of Baldwin. It is Baldwin-Lima-Hamilton today; they were taken over.

Senator O'MAHONEY. I see.

So here we have a merger of Lima-Hamilton and Baldwin in this field.

Mr. PETERSON. That is correct, sir.

I have here information that may add to this. According to the record we have in our company, there were 2,191 diesel locomotives built prior to 1944. Now, the distribution of the builders and who built them, I do not have that record.

Senator O'MAHONEY. Do you have that record, Mr. Neville?

Mr. NEVILLE. Yes.

Senator O'MAHONEY. You will probably go into it later on; I am sorry to interrupt.

Mr. NEVILLE. Mr. Peterson, in selling a locomotive, is it customary or necessary to work with top management, or is it sold on a lower level in the railroads?

Mr. PETERSON. Well, you work with everybody on the railroad who will listen to you, by and large. The final decision is, in my experience, invariably made by the top executive officers of the railroads, based in some instances, certainly, on recommendations that are made by staff people reporting to the chief executive officers.

Mr. NEVILLE. Do you feel that General Motors position in the entire market gives them an undue advantage in contacts with the top management of the railroads?

Mr. PETERSON. Would you rephrase that?

Mr. NEVILLE. Do you feel that General Motors, having contacts and being a much larger corporation, gives them the greater advantage or a greater ease of entry in to the top management than a smaller company such as yours?

Mr. PETERSON. Oh, I would expect so.

Mr. NEVILLE. Have you had any specific examples or situations of that type?

Mr. PETERSON. No; I have not. But knowing they sell aggressively, as we try to do, and I am sure that if we had such contacts we would use them, and I would be surprised if they do not. [Laughter.]

Mr. NEVILLE. What is your feeling about the possibility of the dominant factor in the market in this field staying dominant? I mean, is it a situation where its size simply perpetuates itself, in your opinion?

Mr. PETERSON. I do not know quite how to answer that.

Senator O'MAHONEY. What is the outlook, Mr. Peterson, for Fairbanks, Morse in the sale of diesel locomotives?

Mr. PETERSON. Well, we are——

Mr. O'MAHONEY. What do you tell your stockholders?

Mr. PETERSON. Mr. Chairman, we are encouraged. There is still a good number—there are still many locomotives to be bought by many railroads, and we have—while it is a struggle and not easy—we have every intention of staying in the business, and we hope we can continue to get a reasonable share of what is going to be bought.

We think that locomotives, diesel locomotives, will be bought for some years in the future.

Mr. NEVILLE. Do the mass production possibilities of the General Motors plant give them an advantage that you find hard to compete with?

Mr. PETERSON. Yes.

Mr. NEVILLE. Will you elaborate on that?

Mr. PETERSON. Well, of course, any company that builds a given product in large numbers has an economic advantage, it seems to me, over another company that builds in fewer numbers, as we do.

We might build 10 locomotives a month, and another company might build a hundred, and obviously there are some economic advantages costwise.

You can build, you can set up to build, you can afford to spend more money to build, to lower costs if you are in a big—if you are a big-volume producer.

Mr. NEVILLE. How much money do you have invested in plant and equipment for the manufacture of the locomotives?

Mr. PETERSON. It did not occur to me that you would ask me that; I am afraid I do not have anything that would be reliable. We have invested a great deal of money in the business, I can assure you of that.

Mr. NEVILLE. You produce a complete line of locomotives, do you?

Mr. PETERSON. Yes, sir.

Mr. NEVILLE. I have some pictures that might be of some interest to the Senator.

Are these pictures of your general line?

Mr. PETERSON. Yes. These are pictures of the general type of locomotives that we build, and I thought the committee, Senator, might be interested in seeing them.

Mr. NEVILLE. That is all.

Senator O'MAHONEY. I think I must have been riding behind one of these just the other night coming into Washington from Chicago.

Mr. PETERSON. Yes, sir.

Mr. NEVILLE. At the present time, do all the people in the field produce fairly competitively, both as to price and quality?

Mr. PETERSON. Yes. I do not think there is much difference in the pricing of 1,200 horsepower switching locomotive which is priced generally the same.

There are some differences in the price level among the various companies, however, because the locomotives are not exactly the same.

Our horsepower rating would differ somewhat than General Motors' rating, and likewise American Locomotive's rating would differ a little bit, so the pricing is not exactly the same.

Senator O'MAHONEY. Would you permit me to intervene? These pictures, Mr. Peterson—

Mr. PETERSON. Yes, sir.

Senator O'MAHONEY (continuing). Remind me of the old saying that the man who builds the best mousetrap in the world will find the people making a highway to his home.

Mr. PETERSON. Yes, sir.

Senator O'MAHONEY. I assume that Fairbanks, Morse, if it does not build the best mousetrap, at least in the opinion of its officers, does build the best diesel locomotive?

Mr. PETERSON. That is correct, sir.

Senator O'MAHONEY. Are the railroads building a highway to your factories yet?

Mr. PETERSON. No; but we are beating a path to their doors, anyway. [Laughter.]

Senator O'MAHONEY. Well, the whole question involved in this inquiry is whether that highway of the purchasers to the door of the small manufacturer is impeded by the size of the biggest corporation in the world. That is really what we are getting at.

Mr. PETERSON. Yes; I understand.

I do not know that I have much—whether bigness in a corporation is good for the country, I do not know. If it is not, what could be done about it is still another problem.

Senator O'MAHONEY. Well, of course, it becomes obvious that the larger a corporate entity is, and the greater its financial resources, the easier it is to go into new fields of endeavor.

Mr. PETERSON. I believe that is so.

Senator O'MAHONEY. And that makes it possible for a corporation which has succeeded, let us say, solely through efficiency of management and excellence of output in one line of industry, can use that profit to go into another line of industry in which it has never before engaged, and in which there are efficient operators, and through its financial strength and the size of the business that it itself gives to those who may be the purchasers of the new product, gain an advantage over those already in the industry.

Mr. PETERSON. Yes, sir.

Senator O'MAHONEY. You say, "Yes." Do you agree with my statement?

Mr. PETERSON. I was saying that I understood what you said.

I think that that has been done many times, I am sure, and is still being done.

Senator O'MAHONEY. Thank you very much.

Mr. NEVILLE?

Mr. NEVILLE. Mr. Peterson, I just have 1 or 2 more questions here.

According to the tabulation which you have, as Senator O'Mahoney has already brought out, General Motors has gone from 55 to 75 percent of the total market during the period of years, and yet you feel that pricewise and qualitywise that you do have a very competitive product. Do you have any explanation for that?

Mr. PETERSON. For what phase of it?

Mr. NEVILLE. The ability of General Motors to increase its total percentage of the market from over half to three-quarters during this period of time.

Mr. PETERSON. Well, of course, during certain of these years, as you will see, railroads bought large numbers of locomotives.

In 1950 the railroads bought over 4,000 units. It became at that time almost a matter of how many could you build. General Motors certainly did an outstanding job in enlarging their facilities and producing locomotive units in large numbers.

As indicated here in that year, they got 65 percent of the business or 2,663 units.

Our facilities could not build that many. We built as many as our facilities permitted us to build. I do not know whether that answers your question or not.

Mr. NEVILLE. Do you have any personal feeling as to the disadvantage, insofar as the general economics of the country are con-

cerned, in having such a large concentration of the total output in one company and its facilities?

Mr. PETERSON. Personal feelings? I do not know how to answer that. It might be better if 4 builders were all getting 25 percent of the business, but I do not know how that would happen.

Senator O'MAHONEY. Let us get away from your personal feelings, Mr. Peterson.

Mr. PETERSON. Yes, sir.

Senator O'MAHONEY. Your headquarters are in Chicago?

Mr. PETERSON. Yes, sir.

Senator O'MAHONEY. Where are your plants?

Mr. PETERSON. Well, we have nine plants. Our principal plant is in Wisconsin, Beloit, Wis., about 100 miles north of Chicago.

Senator O'MAHONEY. Where are the other plants?

Mr. PETERSON. Well, we have a plant in St. Johnsbury; we have a plant—

Senator O'MAHONEY. St. Johnsbury?

Mr. PETERSON. Vermont.

Senator O'MAHONEY. Yes.

Mr. PETERSON. And a plant at Pomona, Calif.; St. Louis, Mo.; Kansas City; Stuttgart, Ark.; East Moline; Freeport, Ill.; Three Rivers, Mich.

Senator O'MAHONEY. That is quite a number of States.

Are all of these locomotive plants that you named?

Mr. PETERSON. No, sir. All our locomotives are concentrated in our large plant at Beloit, Wis.

Senator O'MAHONEY. What proportion of your total output is in locomotives?

Mr. PETERSON. I would say it varies perhaps between 15 and 20 percent of our total sales, our locomotives.

Senator O'MAHONEY. At the present time it is between 15 and 20 percent of your total sales?

Mr. PETERSON. That is right.

Senator O'MAHONEY. Its success or failure would affect the entire company's profits, would it not?

Mr. PETERSON. Yes; it would.

Senator O'MAHONEY. How many employees do you have in the production of diesel locomotives?

Mr. PETERSON. I would—and here again I am in an area of guessing, because I do not have that exactly—but I would estimate perhaps 1,500 of our total—our total employees are perhaps about 10,000 in the company overall.

Senator O'MAHONEY. Yes.

Well, it is evident that if your production of diesel locomotives amounted to 20 percent of your total business, the 1,500 employees who are engaged in that production have a vital stake in the success of your company?

Mr. PETERSON. Yes, indeed.

Senator O'MAHONEY. And so does the community in which the factory is built. If you gain business by way of straightforward, honest competition, based upon the value of your product, and the price at which you sell it, then it is beneficial not only to your stockholders and to your employees, but it is also beneficial to the community.

Mr. PETERSON. Yes, sir.

Senator O'MAHONEY. If, however, you find it difficult to compete because of the inherent size of a single competitor like Electro-Motive which, producing in 1944, 58.47 percent of the total output, was producing 77.65 percent in 1954, 10 years later, that increase by weight alone would have a disadvantageous effect upon the smaller competitors not capable financially of building the plants from which these machines are turned out.

Mr. PETERSON. That is right.

Senator O'MAHONEY. No question about that in your mind at all?

Mr. PETERSON. I do not believe there is any question in my mind on that, sir.

Senator O'MAHONEY. So that size and financial strength alone have a great weight in the competitive field even with a corporation such as yours, which employs 10,000 people overall, and 1,500 in the manufacture of diesel engines alone; that is the plain fact of the situation, is it not?

Mr. PETERSON. Well, I think that with the size of General Motors, that does not make it any easier for us to compete with them; it certainly does not do that. It is tough competition.

Senator O'MAHONEY. Well, it is pretty difficult for a lightweight to go against Marciano, is it not?

Mr. PETERSON. That is right.

Senator O'MAHONEY. Mr. Peterson, Mr. Neville, tells me that he does not desire to interrogate you further this morning.

Are there any additional statements that you would like to make?

Mr. PETERSON. No, Senator. I have none.

Senator O'MAHONEY. Mr. Burns, do you have any questions?

Mr. BURNS. No.

(The statistics previously referred to follow:)

Locomotive orders placed by domestic railroads

	1944	1945	1946	1947	1948	1949	1950	1951	1952	1953	1954	1955 to Oct. 20
Alco:												
Units.....	213	166	327	635	592	310	747	833	383	303	152	159
Horsepower.....	229,820	155,080	457,200	855,740	777,080	375,740	1,058,520	1,220,410	598,950	419,680	204,400	242,000
Percent horsepower.....	24.47	14.30	24.53	26.21	22.87	18.99	17.67	23.23	22.68	14.91	12.46	15.22
Baldwin:												
Units.....	164	89	127	261	358	177	412	376	99	104	31	10
Horsepower.....	157,200	104,620	210,380	343,800	374,170	204,000	580,700	630,000	130,000	140,000	42,150	13,200
Percent horsepower.....	16.74	9.64	11.29	10.53	11.01	10.31	9.70	10.09	5.18	4.97	2.57	0.83
Electro-Motive:												
Units.....	364	567	769	1,312	1,462	924	2,663	2,282	1,146	1,316	763	698
Horsepower.....	548,900	804,050	1,130,300	1,774,900	2,051,400	1,280,550	3,894,700	3,315,550	1,690,150	2,047,800	1,273,650	1,218,650
Percent horsepower.....	58.47	74.12	60.64	54.38	60.38	63.73	65.02	63.12	66.96	73.46	77.65	76.62
Fairbanks, Morse:												
Units.....	3	18	38	184	129	66	199	122	89	101	78	71
Horsepower.....	3,000	21,000	66,000	200,000	179,000	95,000	307,200	186,800	130,000	187,600	120,000	116,040
Percent horsepower.....	0.32	1.94	3.54	8.88	5.27	4.80	5.13	3.56	5.18	6.66	7.32	7.33
Lima-Hamilton:												
Units.....					16	27	121					
Horsepower.....					16,000	43,000	148,500					
Percent horsepower.....					0.47	2.17	2.48					
Total all builders:												
Units.....	744	840	1,261	2,392	2,577	1,504	4,021	3,613	1,717	1,824	1,024	938
Horsepower.....	938,920	1,084,750	1,863,880	3,264,440	3,307,650	1,978,200	5,989,620	5,252,760	2,509,100	2,815,080	1,640,200	1,580,490

Source: Railway Age and Fairbanks, Morse.

Senator O'MAHONEY. Who will be our next witness?

(Discussion off the record.)

Senator O'MAHONEY. The committee will stand in recess until 2 o'clock, when Mr. Vanderbilt will appear.

(Whereupon, at 12:45 p. m., the subcommittee recessed, to resume at 2 p. m., the same day.)

AFTERNOON SESSION

Senator O'MAHONEY. Mr. Burns, are you ready to proceed?

Mr. BURNS. Yes, Senator.

Senator O'MAHONEY. Call your witness.

Mr. BURNS. I would like to have Mr. O. DeGray Vanderbilt, vice president of Baldwin-Lima-Hamilton, as our next witness, and he also has with him Mr. R. Nevin Watt, vice president in charge of transportation sales. They are accompanied by Mr. McAdoo, their attorney, and Mr. John Dooling of the firm of Sullivan & Cromwell.

It might be useful to address my questions to Mr. Vanderbilt, and then for the technical questions which might better be answered by Mr. Watt, he can answer those questions.

Senator O'MAHONEY. Very well.

Mr. BURNS. Mr. Vanderbilt, what is your position and what is the scope of your activities for Baldwin-Lima-Hamilton?

**STATEMENT OF O. DeGRAY VANDERBILT III, VICE PRESIDENT
IN CHARGE OF COMMERCIAL ACTIVITIES, BALDWIN-LIMA-
HAMILTON CORP., ACCOMPANIED BY R. NEVIN WATT, VICE
PRESIDENT IN CHARGE OF TRANSPORTATION SALES, ROBERT
McADOO, COUNSEL, AND JOHN F. DOOLING, OF SULLIVAN &
CROMWELL**

Mr. VANDERBILT. I am vice president in charge of commercial activities, which includes responsibility for the sales of all products from all divisions for the company, one of which, of course, is locomotives and other transportation products.

Mr. BURNS. And Mr. Watt, will you tell us what your title is and what your activities are with the company?

Mr. WATT. I am vice president of the company in charge of transportation sales, which includes locomotives as well as other railroad products.

Mr. BURNS. Now, I will address my questions to Mr. Vanderbilt, and when he feels that Mr. Watt should help him, why, he can refer the question to you, Mr. Watt. I will refer to the company as Baldwin for short.

Is Baldwin in the business of manufacturing locomotives for use on railroads?

Mr. VANDERBILT. That is correct.

Mr. BURNS. And can you tell us about how long they have been in that business?

Mr. VANDERBILT. Well, they have been in the locomotive business for over 100 years.

Mr. BURNS. There are three names in the company. Could you tell briefly the history of the relationship of Baldwin, Lima, and Hamilton?

Mr. VANDERBILT. Well, the Baldwin comes from the Baldwin Locomotive Works, whose principal headquarters and plant was located in the vicinity of Philadelphia.

The Lima-Hamilton Corp. was a separate corporation with plants primarily in Hamilton and Lima, Ohio, and they merged together about 1950, and the corporate name was changed to Baldwin-Lima-Hamilton Corp.

Mr. BURNS. Was the Lima-Hamilton Corp. at any time in the business of manufacturing locomotives?

Mr. VANDERBILT. They were.

Mr. BURNS. As of today, what other major products does this company manufacture besides locomotives?

Mr. VANDERBILT. Well, I can give you a quick rundown. I don't guarantee I will cover all products because we have quite a diversified slate of products, but in addition to our transportation products, which include locomotives, dump cars, car wheels, and railway tools, we are heavily in the construction equipment and graders, shovels, et cetera. We make such products as large machine tools, hydraulic turbines, large mechanical presses primarily for the automotive industry, hydraulic presses, testing equipment.

Senator O'MAHONEY. May I interrupt you, sir?

Mr. VANDERBILT. Yes.

(Short recess.)

Senator O'MAHONEY. You may proceed.

Mr. BURNS. We continue with the list of products other than locomotives which Baldwin makes.

Mr. VANDERBILT. You don't wish me to repeat.

Mr. BURNS. Just continue from where you left off.

Mr. VANDERBILT. All right. In addition to what I have already mentioned, we make commercial weldments such as bridges and tunnels and other structures, canmaking machinery, ship's propellers, oil-well equipment, casting and forging. I think that about runs the gamut of the product lines.

Mr. BURNS. Can you tell us approximately how many employees you have working for the corporation altogether?

Mr. VANDERBILT. I would say approximately 12,000.

Mr. BURNS. And how many different plants do you have?

Mr. VANDERBILT. About 10.

Mr. BURNS. And can you give us a figure of approximate gross sales, say, for last year?

Mr. VANDERBILT. Roughly, \$160 million.

Mr. BURNS. How many plants do you have at the present time for the manufacture of locomotives?

Mr. VANDERBILT. Just one in Eddystone, Pa., in the vicinity of Philadelphia.

Mr. BURNS. Did your company produce any diesel locomotives? I will rephrase that question. Does your company make any diesel locomotives at the present time?

Mr. VANDERBILT. They do.

Mr. BURNS. And can you tell us about when they first began to make diesels?

Mr. VANDERBILT. I would say our first diesels were 1936.

Mr. WATT. In that neighborhood, yes.

Mr. VANDERBILT. In 1936 I think we produced two of them in that area.

Mr. BURNS. Prior to the development of your own diesel locomotive, did your company make any diesel engines for any other purposes?

Mr. VANDERBILT. Maybe Mr. Watt should answer that.

Mr. WATT. Yes. We made diesel engines for the pumping—stationary diesel engines principally for oilfields and stationary utility.

Mr. BURNS. Are you talking about the former Baldwin Co.?

Mr. WATT. The former Baldwin Locomotive Works.

Mr. BURNS. Yes, because in 1936 Baldwin was a separate company from the present company.

Mr. WATT. That's correct.

Mr. BURNS. And to what extent was the Baldwin Co. in the diesel engine field prior to manufacturing the diesel locomotive?

Mr. WATT. Not to a large extent. We had a modest diesel-engine business.

Mr. BURNS. Do you know whether the Lima Corp. made any diesels prior to the time that it was merged with Baldwin in 1950?

Mr. WATT. I believe Lima started the manufacture of diesel locomotives about 1947 and made very few before the absorption by Baldwin Locomotive.

Mr. BURNS. Now at the time that Baldwin began to manufacture diesel locomotives, what was the situation in the business of manufacturing steam locomotives? What was the business situation at that time?

Mr. WATT. There were three manufacturers of what we call main line steam locomotives: Baldwin Locomotive Works, American Locomotive Co., and Lima Locomotive Co.

Mr. BURNS. Do you have any figures which would show the relative percentages of the market that each of those companies had at about that time?

Mr. WATT. Oh, over the years I would say that Baldwin and Lima participated to the extent of probably 80 percent of the business, and Lima probably 20 percent, Baldwin and Alco—

Mr. BURNS. So that Baldwin and American Locomotive had about 80 percent of the steam locomotive business and Lima had about 20 percent?

Mr. WATT. That's right.

Mr. BURNS. That was prior to the development of diesel engines?

Senator O'MAHONEY. This wasn't a combination between Baldwin and American Locomotive?

Mr. WATT. No. If I say over the years, it would average that.

Senator O'MAHONEY. You say 80 percent. Could you give us the separate percentage for each of these units?

Mr. WATT. I can't by years, but over the years I don't think there was a whole lot of variance between Baldwin's participation in the business and American's participation, probably each about 40.

Senator O'MAHONEY. Each would have about 40.

Mr. WATT. In that neighborhood, yes; 35, 45, or 40, in that neighborhood.

Senator O'MAHONEY. Thank you.

Mr. BURNS. What factors caused Baldwin to go into the diesel locomotive field?

Mr. WATT. Well, I think it was obvious in the early forties that the diesel was headed for a very important piece of motor power for the railroads of the country.

Mr. BURNS. Are you familiar with the development of the diesel locomotive by the General Motors Co.? I don't mean the details of the development, but are you familiar with the fact that they did develop and put on the road a diesel locomotive?

Mr. WATT. Yes. Of course, that is public information.

Mr. BURNS. And I presume, being in the locomotive field yourself, that was something which you follow with considerable interest?

Mr. WATT. Surely.

Mr. BURNS. Could you tell us briefly what you know about the manner in which General Motors happened to get into this diesel locomotive industry?

Mr. WATT. No, I couldn't tell you how they happened to get into it. I believe I am correct in stating that it was through the acquisition of the Winton Engine Co., as was brought out in testimony this morning.

Mr. BURNS. Do you know when General Motors first put diesels on the road?

Mr. WATT. I would think about the middle of the thirties.

Senator O'MAHONEY. May I ask a question, Mr. Burns? Was the Winton Engine Co. a competitor of Baldwin?

Mr. WATT. No, we didn't compete with the engine.

Senator O'MAHONEY. What did the Winton Engine Co. make?

Mr. WATT. It was, to my knowledge, just diesel engines, but of a size that were not competitive with the size that we were then making.

Senator O'MAHONEY. Were they making anything except diesel engines?

Mr. WATT. I don't believe so, but I am not certain of that.

Senator O'MAHONEY. Did you regard them as a large company or a small company?

Mr. WATT. Well, I have no immediate knowledge of the Winston engine of that time. I wouldn't know. I wouldn't know the answer, Senator.

Senator O'MAHONEY. In other words, so far as Baldwin and American Locomotive and Lima were concerned, Winston was a very obscure element in the locomotive field?

Mr. WATT. Yes, sir.

Senator O'MAHONEY. It was manufacturing diesels, however?

Mr. WATT. Diesel engines.

Senator O'MAHONEY. Yes. You say a smaller kind, not a locomotive engine.

Mr. WATT. They were manufacturing, I believe, engines for—one of their outlets was in a rail car that was rather popular in railroads at that time, single-unit car powered by a diesel engine.

Senator O'MAHONEY. When you speak of a single-unit car, what do you mean?

Mr. WATT. A single unit that provides the motor power compartment, possibly a small baggage compartment in the rear of that, and then a space for a few passengers for use in branch line service.

Senator O'MAHONEY. In other words, it was a peanut locomotive train?

Mr. WATT. It was a complete train, a train unto itself.

Senator O'MAHONEY. I see. So that actually it was not a competitor?

Mr. WATT. No.

Senator O'MAHONEY. A competitor of Baldwin, American Locomotive or Lima in the manufacture of locomotive for an ordinary train?

Mr. WATT. That's correct.

Senator O'MAHONEY. When did you first begin to realize that it was making the large locomotive?

Mr. WATT. I say I believe it was in the mid-thirties that they came out with—

Senator O'MAHONEY. Was that before or after General Motors acquired it?

Mr. WATT. I believe after. I am not certain.

Senator O'MAHONEY. When did you first know that General Motors had acquired it?

Mr. WATT. This is going back into history a little bit. I would say about that time that they came out with a railroad locomotive, a diesel electric locomotive.

Senator O'MAHONEY. How long did it take them in terms of years to become a serious competitor in the field, after you first became aware of their existence?

Mr. WATT. I would say 3 or 4 years.

Senator O'MAHONEY. Three or four years?

Mr. WATT. Yes.

Senator O'MAHONEY. In other words, they bloomed very suddenly, and very rapidly?

Mr. WATT. Yes.

Senator O'MAHONEY. And presently they are making more locomotives than you are?

Mr. WATT. They presently are.

Senator O'MAHONEY. Thank you, Mr. Burns.

Mr. BURNS. Senator, I might say information will be developed that the staff has already received that it was in 1930 that General Motors acquired the Winton Co., and also the Electro-Motive Engineering Co. and that in 1934 the first two diesel locomotives, passenger locomotives, were placed in service on the Burlington Railroad, and that was the first over-the-road diesel train which General Motors had produced, and from that they went into the production of switching locomotives and then followed that with freight and passenger.

Senator O'MAHONEY. It might be interesting for me to state for the record why I am particularly interested in that.

Wyoming is rich in natural resources, coal and oil. The Burlington Railroad operates in Wyoming and so does the Union Pacific. The Union Pacific finally decided to dieselize and they ran a diesel engine into Rock Springs, which is the principal town in Sweetwater County, the principal coal-mining community of the State. The Union Pacific was proud of this new diesel and was so proud that it wanted to have a photograph taken and run in the papers, but the crew, the engineers, and the firemen, refused to stand by and have their pictures taken with the diesel engines in the great coal mining section.

Mr. WATT. I can well understand that

Senator O'MAHONEY. I tell that because it illustrates in a practical human way the effect that this big business operation has upon local communities.

Mr. BURNS. Now at that time that Baldwin began to develop a diesel, did it limit its development to one type of locomotive?

Mr. WATT. Yes; we started out with what is known generally in the trade as a switching type of locomotive.

Mr. BURNS. Will you just tell us what the different types, broad classifications, of locomotives are that are used in railroads?

Mr. WATT. Well, generally there are four types, the straight switcher yard locomotive, the what we call an all-purpose locomotive that can be used in either switching or road service, a passenger type of locomotive and a freight type of locomotive.

Mr. BURNS. Were those classifications used both for the steam locomotives and for the diesels?

Mr. WATT. Yes, they were.

Mr. BURNS. In developing your diesel, was there any special reason why you started with these switchers?

Mr. WATT. The market at that time seemed to favor the diesel electric and switching service rather than road type of service.

Mr. BURNS. You say the market favored. Were there any other diesel locomotives being made at the time you started in, by any company other than General Motors?

Mr. WATT. Yes, I think the American Locomotive Co. was at that time building a switcher type of locomotive.

Mr. BURNS. And do you happen to know about when they began to develop their diesel?

Mr. WATT. No. I would say about the same time.

Mr. BURNS. What was the extent of this market which you were discussing which indicated that development of diesels for us as switchers appeared to be likely?

Mr. WATT. Well, in those early days of the development of the diesel locomotive, other than this locomotive you speak of that was put on the Burlington, the development had all been along the lines of diesel electrics for switching type of service. Very little progress, if any, had been made in that form of locomotive for other types of transportation, heavier transportation service.

Mr. BURNS. Will you describe briefly the efforts of Baldwin to develop the diesel switcher locomotive both from the standpoint of technical problems, if any, and also from the problem of sales to the customers?

Mr. WATT. I don't know just how to answer that question because we were not a big factor in the building of diesel electric locomotives until, oh, about 1940.

Mr. BURNS. Between 1936 and 1940 were you in the process of developing one from the technical standpoint or did you have one that you were capable of making and it was a question of what approach to take toward putting it out on the market or selling it?

Mr. WATT. We had an engine and we designed a chassis and body in which to put it, and then we had to get it out on the railroads to test it. That takes time.

Mr. BURNS. When did you first sell diesels? Do you have any record of that?

Mr. WATT. No; I have no record. I think we sold a couple in 1937 and probably skipped a year and sold a very few more in 1938, or somewhere in that neighborhood.

Senator O'MAHONEY. May I ask a question at this point? You spoke of having to get the engine out on the railroads to test it?

Mr. WATT. Yes.

Senator O'MAHONEY. How did you do that?

Mr. WATT. By building a locomotive, selling it.

Senator O'MAHONEY. By building it and selling it?

Mr. WATT. That's right.

Senator O'MAHONEY. You didn't offer the locomotive to the railroad and say, "Now here, see if it will drag a train"?

Mr. WATT. No, sir.

Senator O'MAHONEY. You sold it first?

Mr. WATT. We sold it.

Mr. BURNS. We have a chart here which I think will help to answer some of these questions. It is entitled "Steam Locomotive Building Industry, United States and Canada," on one side, and "Diesel Locomotive Building Industry, United States," on the other.

It indicates that Baldwin shipped two diesel locomotive switchers, which is in the second major column, the first of the diesel columns, in 1937.

Mr. WATT. I would say that is substantially correct; yes.

Mr. BURNS. Now, between 1936, when you started to develop this diesel, and 1940, when apparently you were able to ship 10 switchers—

Mr. VANDERBILT. Ten percent.

Mr. BURNS. I am sorry; that's right; that is a percent of the total.

Mr. VANDERBILT. It would be 43 units in 1940.

Mr. BURNS. It would be 34, I think, of switchers. The total switchers is 346, and you sold 10 percent?

Mr. VANDERBILT. Yes.

Mr. BURNS. So that in 1937, out of 149 diesel switchers that were sold, Baldwin had 2 percent?

Mr. VANDERBILT. About 3 locomotives.

Mr. BURNS. During that time the number of locomotive switchers that were sold indicates that in 1934 there were 4; in 1935, 15; 1936, 26; 1937, 149; 1938, 106; 1939, 155; 1940, 346; and that the 2 companies producing them at that time besides yourself were American Locomotive and General Motors, and in the year 1934, when 4 were shipped, American Locomotive shipped all of them, and then about 1936, 2 years later, when 26 were shipped, General Motors had 77 percent of those sold, and Alco 23.

During that period up to 1940, what was the situation as far as your development of the diesel was concerned?

Mr. WATT. Well, I think it is obvious that we are getting into it in a very gradual feeling-our-way procedure.

Mr. BURNS. At that time were you continuing to sell steam locomotives?

Mr. WATT. We were; yes.

Mr. BURNS. And to the extent that General Motors was selling diesels, were they replacing sales of steam locomotives or were they

creating a new market, say, so that the steam locomotive sales were unaffected?

Mr. WATT. I would say they were creating a new market, certainly. You weren't buying a diesel electric and then buying a steam locomotive to protect it.

Mr. BURNS. No. What I meant was—in the railroad industry, is there a constant increase in the number of locomotives so that the market that General Motors was reaching was above the existing steam locomotive market, or were their sales taking away some of the sales which otherwise would have been in steam?

Mr. VANDERBILT. I would say they probably were taking away from the steam sales, because when a diesel electric was sold, it meant that one or maybe even in some cases a couple of steam engines would not be purchased.

Mr. BURNS. With that constantly growing number of diesels and also, as is shown on this chart, the increasing number of road passenger locomotives which by 1940 had reached 78 units, did that have any effect on your business in selling steam locomotives?

Mr. VANDERBILT. I would say very definitely one was replacing the other.

Mr. BURNS. What efforts were you making to meet that competition which was cutting into the steam locomotive business?

Mr. VANDERBILT. I think I could answer that generally. It was about that time that it was inevitable that there was a place, and an important place, for the diesel electric locomotive on our railroads, and if that was true, then it was inevitable that the demand for steam locomotives would taper off and eventually disappear.

However, we could not drop the steam locomotive and concentrate all our efforts on the diesels because there were several railroads at that time that still stuck with the steam locomotive, they were our customers, and we had an obligation to continue production for their use.

So we were straddling two horses, so to speak, whereas EMD didn't have the complication of the steam locomotives. They could devote all of their interests and energies to the diesel.

Mr. BURNS. Up to 1940 when you went into the diesels more heavily, had GM been selling any diesels to railroads which had been your customers?

Mr. VANDERBILT. Yes; surely.

Mr. BURNS. Did you find it necessary to switch your production to diesels in order to retain your business?

Mr. WATT. Not in those particular years, no; because we weren't ready for it.

Mr. BURNS. Were there any problems you encountered during the period 1936-40 in the sale of your diesel switching locomotives, or did that come after you made the decision or apparently saw that you should expand your diesel activities?

Mr. VANDERBILT. In think there is no doubt that General Motors had a running start on this. As you can see from these figures, we came into the picture later, and naturally we had at a later time the development pains which are necessary to launch any new product, and we were feeling our way along here at a time when General Motors had developed and eliminated a lot of the kinks in their products and really had something to sell. We were just approaching that point.

Mr. BURNS. Then starting in 1940, will you tell us what the nature was of your development of your diesels and also of your sales of diesels?

Mr. WATT. Well, during the early forties, during the period of the Second World War, we were restricted in the development of our diesel electric locomotives to nothing but the switcher type that we had then been building under regulations from WPB.

Mr. BURNS. Do you recall in what year those restrictions were first applied?

Mr. WATT. I can't give you the exact years. I would say 1941-44, probably.

Mr. BURNS. During that time, you did continue to make diesel switchers but made no effort to develop other types because you didn't have allocations of materials?

Mr. WATT. That's right. We were not permitted to make other types.

Mr. VANDERBILT. And don't forget at that time too the demand by the services for steam locomotives was tremendous, and all our resources, energies, and facilities were directed toward fulfilling those requirements which diverted that effort from the development of this new product, so to speak.

That development work did not go on as fast as it would have if there hadn't been a war.

Mr. BURNS. When the war ended or when the restrictions ended, what activities did you have in the further development of diesels or attempts to sell either diesels or steam locomotives?

Mr. VANDERBILT. Well, I think at the end of the war—and you can see by these statistics with the big year appearing in about—it built up but really it got going in about 1947, which enabled everybody after World War II to collect themselves and really get into the business, but it was inevitable at that point that diesel electric were the type of motive power that the railroads had to have, and if anybody was going to stay in the locomotive business, they had to muster all the resources and brains to get a product which was a good diesel electric unit.

Mr. BURNS. And at that time what problems, if any, did you encounter in developing your market for diesels?

Mr. VANDERBILT. Well, we had all the usual problems of developing and launching a new product, and we had the problems of retaining what we considered a fair economical share of the existing market.

Mr. BURNS. And prior to the war, at least up to the late thirties, you had approximately 40 percent of the United States locomotive market?

Mr. VANDERBILT. In the steam locomotive business.

Mr. BURNS. Steam; yes.

Mr. VANDERBILT. Right.

Mr. BURNS. And after the war the railroads were turning more and more to diesels and replacing steam entirely.

Mr. VANDERBILT. Right.

Mr. BURNS. Your company recognized that, and was using its resources to make the switch itself from the steam to the diesel.

Now what was the nature of the competitive market that you faced at that time in trying to switch your activities from steam to diesel and maintain a competitive position?

Mr. VANDERBILT. Well, I think time was a factor. General Motors, and Alco, too, as you can see from this, had a few years head start on us in the development of this product.

I think General Motors, particularly, probably got rid of their growing pains at a time when we were right in the middle of that period, and then, of course, there is no doubt they had developed and spent the money to develop wonderful manufacturing facilities to produce these locomotives on a mass-production basis.

Mr. BURNS. This same chart shows that in 1946 Baldwin had 22 percent of the switcher locomotive sales of diesels.

Senator O'MAHONEY. What year?

Mr. BURNS. In 1946, 22 percent. That is the second main column, the last line; General Motors, 35 percent, and Alco, 38 percent; and in 1954 Baldwin had 8 percent, General Motors had 60 percent, and Alco had 25 percent.

Now, in the field of road switchers it shows no road switchers at all for Baldwin in 1946, but in 1947 I think it shows 11 percent. I am sorry—11 percent in 1946, and it went up to 22 percent in 1947, then dropped down to 2 percent in 1954. Now, that is in the first category of road switchers.

Now, over on the road freight, it shows in 1946: 5 percent for Baldwin, 75 percent for General Motors, 20 percent for Alco; and, in 1954, 100 percent for General Motors.

Taking the same years for road passengers, it shows in 1946: 27 percent for Baldwin, 44 percent for General Motors, 13 percent for Alco; and in 1954; 100 percent, so that by 1954 General Motors had 100 percent of the road freight and road passenger locomotives, and 74 percent of the road switchers.

Are those figures correct?

Mr. VANDERBILT. Well, I don't think we had any; did we?

Mr. WATT. We were not building a passenger locomotive that year. We discontinued manufacture of it earlier.

Mr. VANDERBILT. Whether the others had any, we don't know.

Mr. WATT. I couldn't answer for American.

Mr. BURNS. Now, in 1954 did you sell any steam locomotives in the United States?

Mr. VANDERBILT. No.

Mr. WATT. Not for domestic use; no.

Mr. BURNS. And do you happen to know whether Fairbanks-Morse or Alco sold any steam locomotives in—

Mr. WATTS. Fairbanks-Morse never built steam locomotives, and I am quite certain American discontinued their facilities for building steam locomotives in—1954, do you say?

Mr. BURNS. Yes.

You are in this business. Can you state whether, in 1954, General Motors built all of the locomotives that were sold for use for road freight or road passenger service?

Mr. VANDERBILT. Well, we did not build any; right?

Mr. WATT. We did not.

Mr. VANDERBILT. But whether Fairbanks-Morse or American Locomotive did, we don't know.

Mr. BURNS. But in the years before the war, and for some years after the war, you did a substantial business in road freight and road passenger locomotives, propelled by steam?

Mr. WATT. That's correct.

Mr. VANDERBILT. Right.

Mr. BURNS. And that business was gone in 1954?

Mr. VANDERBILT. Right.

Mr. BURNS. And the only locomotives you were making, then, in 1954, were some diesels for switching purposes?

Mr. VANDERBILT. Right.

Mr. BURNS. You mentioned mass production. What effect did the General Motors method of making diesels by mass production have on your ability to compete in the manufacture of diesels?

Mr. VANDERBILT. Well, it all comes down, as was mentioned this morning, to a question of manufacturing costs, and if one has the facilities and the tooling for producing on a mass production basis, and if they can capture the volume to justify such a setup, there is no doubt that it is very difficult to compete costwise on the part of anybody who doesn't have such facilities.

Mr. BURNS. Was there any special financing problem involved in creating those mass-production facilities?

Mr. VANDERBILT. Well, to be sure, it took a considerable outlay of capital to develop those facilities, and no company would treat such an expenditure lightly, without analyzing the market very carefully for a justification. General Motors did spend the money. Whether anybody else could afford to follow them, that is the question.

Mr. BURNS. Have you any information as to the capital that was invested by General Motors in its plant at La Grange when it instituted this—

Mr. VANDERBILT. Oh, we don't know. We have heard stories of 40 or 50 million, but whether that is right or wrong I am sure I can't tell.

Mr. BURNS. Did you ever make any estimate as to what it would cost for Baldwin to set up a plant to mass-produce in competition with General Motors?

Mr. VANDERBILT. You mean today?

Mr. BURNS. At any time; at any time when you were considering this.

Mr. VANDERBILT. If they spent 40 or 50 million dollars at that time, if we had wanted to duplicate those facilities, it would have cost us the same amount of money. I don't think the volume of the market could justify two such duplicate facilities, though.

Mr. BURNS. Can you give us any figures which represent the annual total sales in locomotives during this period in the thirties, when the development of diesel was first put on the road, say the late thirties?

Mr. VANDERBILT. You mean the steam locomotive volume?

Mr. BURNS. Yes; your total locomotive volume.

Mr. WATT. In the early thirties?

Mr. BURNS. No; the late thirties, at the time when General Motors was entering the field.

Mr. WATT. I haven't those available, and I have forgotten. We had some very poor years all through the thirties in the locomotive business.

Mr. BURNS. In addition to the advantage which resulted from the ability to produce these on a mass-production basis, was the fact that the diesels were being made by General Motors, a company which ships itself over the railroad tremendous quantities of freight. I be-

lieve it has been stated that it is the largest shipper of freight in the United States. Do you feel that that in any way gave it advantages in selling its locomotives over a company like yours, which did not have so much freight being shipped over the railroads?

Mr. VANDERBILT. Oh, I think that is true. I think we would be naive to assume that General Motors' tremendous volume of traffic over the railroads does not have a profound influence on railroad purchasing. If the railroads didn't take it into consideration, I am sure they wouldn't be doing their job.

Mr. BURNS. Did you encounter any problems as a result of the nature of this product which was taking the place of steam, this diesel product? Did it create any repair difficulties which added to the other problems of endeavoring to break into this market?

Mr. WATT. It was an entirely new venture for the railroads. The railroads had to be educated in the maintenance of the equipment. They had to be educated in that by the builders, something we had not encountered in the steam locomotives because the railroads were fully equipped to maintain and service steam locomotives—

Mr. BURNS. Speak just a little louder, please.

Mr. WATT (continuing). Having used them over the years.

Mr. BURNS. Was it the custom in the railroad industry for each railroad to repair its own locomotives?

Mr. WATT. Steam locomotives?

Mr. BURNS. Steam locomotives.

Mr. WATT. Yes.

Mr. BURNS. And when they shifted to diesels, what was the situation with respect to repairing the locomotives, the diesel locomotives?

Mr. WATT. They did not have the facilities in the early days to repair their diesel locomotives. They were acquired later, or the know-how.

Mr. BURNS. How did you service your customers in repairing the diesels which they purchased from you?

Mr. WATT. By the use of service engineers.

Mr. BURNS. Just how was that handled, as a matter of practice? You had one plant?

Mr. WATT. These repairs can usually be made in the shops of the railroad. This is not a rebuilding program. It is a repair or correcting of certain pieces of equipment that might be giving them trouble.

Mr. VANDERBILT. It is a question of having spare parts depots conveniently located and servicemen available to reenforce the efforts of the railroad-maintenance people.

Mr. BURNS. Did you provide those facilities throughout the country, that is, did you sell steam locomotives to railroads that operated all over the United States?

Mr. WATT. Yes.

Mr. BURNS. And did you have the problem of being able to render service throughout the whole United States?

Mr. VANDERBILT. You are talking about diesels now, or steam?

Mr. BURNS. I am starting with the customers to whom you sold steam locomotives. You sold them throughout the United States?

Mr. VANDERBILT. Right.

Mr. BURNS. Now, when you wanted to sell them diesels, the same customers bought them and used them throughout the United States,

you had the problem of providing repair-service facilities throughout the United States?

Mr. WATT. No. If we had it, we didn't recognize it.

Mr. BURNS. We have been told that one of the difficulties, as you have indicated, to a certain extent, with the sale of diesels, was that since they were a new product, the railroad relied on the manufacturer to take care of the repairs or to provide——

Mr. WATT. No; to educate the maintenance people on the railroads how to repair their locomotives.

Mr. BURNS. And also to have parts available?

Mr. WATT. That's right.

Mr. BURNS. In having the parts available, did the railroads buy parts and have them handy, or was it up to the manufacturer of the locomotive to be able to get them to the railroad needed?

Mr. WATT. The railroads bought an inventory of parts to carry, to take care of just such emergencies.

Mr. BURNS. I understand that the General Motors Corp. set up the 5 or 6 repair stations in various parts of the country in order to be able to service the customers of the locomotives. Was that an advantage to them in the sale of their locomotives which you were unable to meet?

Mr. WATT. We didn't have it. I don't know how much of a factor it was in General Motors obtaining business that we were not able to get.

Mr. VANDERBILT. There is no doubt that service certainly helped in the marketing of the product. Whether you could afford to carry it out to the fullest extent or not was another question.

Mr. BURNS. Did the diesel locomotive also result in a change in attitude toward standardization in locomotives?

Mr. WATT. Very definitely.

Mr. VANDERBILT. Definitely. I think the diesel electric could never have been practically and economically produced unless it was standardized to the point where volume production would result.

And there is not doubt that the advent of the diesel finally was accepted after the railroads were educated to the fact that it was to their advantage to have standardization.

Mr. BURNS. Did that standardization affect the willingness of railroads to accept products from various manufacturers rather than staying with one manufacturer whose parts would be interchangeable in the various locomotives?

Mr. VANDERBILT. I think initially the railroads tried to patronize all the locomotive companies to some extent, and they still do, of course.

But as their experience grew with the maintenance and operating problems of these diesel electric locomotives, it wasn't long before they realized the advantages of having one type of locomotive power from one manufacturer, at least, concentrated on one division of a large railroad or, in the case of a very small railroad where they had a limited number of locomotives, they probably could not justify buying except from one source, because of the fact that they had to carry duplicate inventories of spare parts, their maintenance personnel had to be familiar with two types of motive power which differed from one manufacturer to the other.

Mr. BURNS. To that extent, would you say that the company which got into the market first had an advantage due to that changing attitude of the railroads toward standardization, which was quite differ-

ent from the attitude with steam, in which they had all different types, some of them specially built for the particular railroads?

Mr. VANDERBILT. I would say that is true, certainly.

Mr. BURNS. And by the time the war was over, that was one of the problems, one of the factors, which you had to meet in endeavoring to switch from the steam locomotive over to the diesels; is that right?

Mr. VANDERBILT. Right.

Mr. BURNS. To what extent did you find sales resistance among the railroad companies to adopting the diesel, and how was that overcome by you or any of the other companies who were trying to sell them?

Mr. VANDERBILT. Well, I think that the diesel proved itself when they got out in service and had enough mileage to their record, then the record spoke for itself, and it was inevitable that the economies were such that the railroads had to convert over, and the quicker the better.

Mr. BURNS. It has been said that in endeavoring to overcome the resistance of railroads to changing their whole method from steam to diesels, that General Motors had to put locomotives right on their railroad and sell them, with the idea that they should use these diesels which, of course, meant it had to have a considerable investment in capital in order to build the locomotives, put them on the road as samples, to get the business.

Now, did you have any problem in trying to sell your locomotives, diesels, to your customers comparable to that which GM experienced?

Mr. VANDERBILT. Well, I would say that probably you can give GM credit for having done some missionary pioneering work in here because they were the first ones. Now, whether they actually put units, which they built at their own cost, free of charge on a railroad's lines, I don't know. However, I am quite sure that the Baldwin Locomotive Works couldn't have afforded such a program.

Mr. BURNS. Did you build any locomotives as sample models, and then endeavor to sell them, or did you build them only after obtaining orders?

Mr. WATT. We probably had 2 or 3 demonstrators out of a new type, yes, subsequently sold.

Senator O'MAHONEY. As I look at these tables, Mr. Watt and Mr. Vanderbilt, there seems to be a rather revealing picture, the explanation of which is not immediately visible to me.

On the switchers, it would appear that the peak was reached in the total sales and ordering of diesels in 1950; the total there is given as 4,174. Now, that has decreased steadily since 1950, and in 1954 had fallen to 983.

If you go over to the road switchers, the 1950 peak was 1,240 units, which then continued to decline except for the year 1953, which showed a gain over 1952 but was still below 1950, and the low point was reached in 1954 when there were only 635.

Then, to go over to the road freight engines, we find the peak again in 1950 of 1,585, dropping to 1,245 in 1951, and finally to only 85 engines in 1954, while, with respect to road passengers, the peak in 1950 was 158—no; the number in 1950 was 158, it increased to 188, and has continued to drop off until now it is only 27. These road passenger

diesels, however, were greater in number way back in 1947 than they have been since 1950.

Now, during this period it would appear that the percentage of American Locomotive in the building of switchers was 19 percent in 1950 and 25 percent in 1954, whereas General Motors was 48 percent of the peak number of 4,174 in 1950 and increased to 60 in 1954.

In like manner, on the road switcher General Motors increased from 57 percent in 1950 to 74 percent in 1954, whereas American Locomotive dropped from 28 to 14, and, at the same time, Baldwin, in 1950, which had 9 percent in 1954, had only 2 percent of the road switchers.

Then we go over to the road freights. Here Alco had 10 percent in 1950, 11 percent in 1953, and apparently nothing in 1954. Baldwin, from 7 percent in 1950, rose to 8 percent in 1954, and then dropped off to 2 in the 2 succeeding years, and in 1954 to nothing, whereas General Motors increased from 82 percent to 100 percent.

Then, in the column of road passengers, Alco dropped from 20 percent in 1950 to 15 percent in 1953 and then disappeared. Fairbanks, Morse, with 3 percent in 1950, rose to 10 percent in 1954 and then disappeared. General Motors, meanwhile, in 1950, had 77 percent, rose steadily, until 1954 it is set down as having 100 percent. It has a larger percentage of a lesser number.

What is your outlook, Mr. Vanderbilt, for the diesel locomotive business as a whole?

Mr. VANDERBILT. Well, of course, as we all know, figures don't lie, that this—

Senator O'MAHONEY. Now, don't give us the rest of that.

Mr. VANDERBILT (continuing). Statistical information shows the picture as it exists today. As far as we are concerned, it is a tough situation. However, we have been in the locomotive business for over a hundred years, and we don't intend to get out now. We have had our gloomy periods before.

We are currently concentrating all our efforts and resources on the development, as somebody mentioned this morning, of a better mouse-trap, which we think we have. We expect that that will be ready for the market very shortly, and, assuming that we have a healthy state of competition and a healthier situation exists in the industry than does today, then we hope to recapture what we consider a fair, profitable share of the market.

Senator O'MAHONEY. Well, these figures show, with respect to road freight diesels and road passenger diesels, that in the last 5 years General Motors has risen steadily from an average of about 78 percent to 100 percent of the total production.

Now, does that leave much hope for competition with General Motors by any of these other manufacturers of diesel engines in the field of road freight and road passengers in the future years?

Mr. VANDERBILT. Well, from looking at these figures, it would be hard to answer that in the affirmative, but there is hope; we think there probably is.

Senator O'MAHONEY. You terminated in 1954. What have you done in 1955?

Mr. VANDERBILT. Not much better, certainly.

Senator O'MAHONEY. Have you manufactured any diesels in 1955?

Mr. VANDERBILT. Oh, yes.

Senator O'MAHONEY. Have you sold them?

Mr. VANDERBILT. But a very unsatisfactory quantity of them, from a production viewpoint.

Senator O'MAHONEY. The quality of your diesel engines, sir, how is that?

Mr. VANDERBILT. That is fine; the best, as we always say.

Senator O'MAHONEY. The best?

Mr. VANDERBILT. Right.

Senator O'MAHONEY. Well, what is the obstacle to the sale of the best?

Mr. VANDERBILT. Well, frankly, the diesel electric field to us, our interest diminishes because of the low volume of business that we have been enjoying, and the present price situation, and that is why we are enthusiastic about this new development, which we feel will take us a long way along the road towards obsoleting this type of equipment.

Senator O'MAHONEY. Well, you are not obsoleting the diesel-electric engine?

Mr. VANDERBILT. To some extent, we hope.

Senator O'MAHONEY. Well, what is this new type of equipment you are talking about; something else?

Mr. VANDERBILT. Yes.

Senator O'MAHONEY. Another product?

Mr. VANDERBILT. No; it is a continuation of this development of the diesel engine locomotive, with a new type of transmission.

Senator O'MAHONEY. For both freight and passengers?

Mr. VANDERBILT. Right; with a new type of transmission.

Senator O'MAHONEY. A new type of transmission which you have not yet put on the market, I take it?

Mr. VANDERBILT. We currently have, which was in the papers, two orders for the motive power in connection with streamlined trains, one for the New York, New Haven & Hartford, and one for the New York Central, and in both those cases this new principle I speak of will be embodied in those locomotives, and we are currently working on completing those locomotives for that service. That whole train, of course, is a revolutionary concept of what future transportation on the railroads should be.

Senator O'MAHONEY. I observe that Baldwin found it advisable to combine with Lima. That combination took place, or that merger, between 1945 and 1946, according to this table?

Mr. VANDERBILT. No; that was about 1950.

Senator O'MAHONEY. Well, the reason I say that, this is only because I am reading the table, I found separate figures for Baldwin and for Lima in 1945 for the steam locomotives, and then there is a centralized column from there on which seemed to combine both Baldwin and Lima for the steam locomotives.

Mr. WATT. I don't know why that was done. It should have been the same subdivision up to 1950.

Senator O'MAHONEY. I beg your pardon?

Mr. WATT. It should have been the same subdivision until 1950.

Senator O'MAHONEY. Until 1950?

Mr. VANDERBILT. 1950 was the year that the combination took place.

Senator O'MAHONEY. Mr. Burns, what was the source of this table?

Mr. NEVILLE. It is noted on the bottom, Senator, number of sources, Railway Age.

Senator O'MAHONEY. This is a combination of figures?

Mr. NEVILLE. You have to look at the number.

Senator O'MAHONEY. You pointed to figure 6:

Railway Age's estimates of orders for diesel locomotives from Canadian subsidiaries of American Locomotive—

and so on. These are authoritative figures, are they?

Mr. NEVILLE. Yes, sir; that's right.

Senator O'MAHONEY. Will you put in the record the source of the figures, so that it will be clear?

Mr. NEVILLE. The next witness will identify it.

Senator O'MAHONEY. Good.

How about the manufacture of the steam locomotive? Has that been abandoned?

Mr. VANDERBILT. For all intents and purposes. We still are producing the finish-up of a run of steam locomotives for export, but domestically there is nothing.

Senator O'MAHONEY. What we see here is that the old companies which manufactured steam locomotives have merged and abandoned the field, to all intents and purposes, of manufacturing steam locomotives.

Mr. VANDERBILT. To interrupt, I wouldn't say we have abandoned the field, because that is the last of our intentions.

Senator O'MAHONEY. I said to all intents and purposes, because those were your words, of steam locomotives.

Mr. VANDERBILT. Of steam locomotives; right.

Senator O'MAHONEY. That is all I was talking about.

Mr. VANDERBILT. Oh, I am sorry. Right.

Senator O'MAHONEY. You have abandoned, to all intents and purposes, the field of steam locomotives?

Mr. VANDERBILT. Right, sir.

Senator O'MAHONEY. Because progress has put the diesel in its place?

Mr. VANDERBILT. Right.

Senator O'MAHONEY. Now, this vacuum has been filled by General Motors which, some years ago, acquired a small manufacturer of diesel engines, the Winton Co., which was so small that it really wasn't recognized in the industry as amounting to much. And that has built up to capture the whole field of diesel engines at the present time, in freight and passenger?

Mr. VANDERBILT. 76 percent of the total field.

Senator O'MAHONEY. That 24 percent is to be found practically only in switchers and road switchers; is that not right? That is what this story tells.

Mr. VANDERBILT. From these statistics, that would be a true statement, yes.

Senator O'MAHONEY. That would be a true statement.

Now, these old-type companies are looking forward to the future with a new type of diesel engine which has not yet actually been taken far beyond the testing stage?

Mr. VANDERBILT. Right, sir.

Senator O'MAHONEY. Have I correctly summarized the story that you have told?

Mr. VANDERBILT. Yes; I would say that is about the situation we face today.

Senator O'MAHONEY. And in entering this field, this new field that you see ahead, I suppose you are confident that General Motors also have some knowledge of the possibilities and may be carrying on similar experiments?

Mr. VANDERBILT. I wouldn't doubt it a bit.

Senator O'MAHONEY. So that you now find yourselves in the position of a newcomer in an industry of locomotive transportation which you, to all intents and purposes, originally established?

Mr. VANDERBILT. Right, sir.

Mr. BURNS. May we have inserted in the record this chart from which we have been reading, which gives the figures of steam and diesel locomotive shipments from 1934 to 1954?

Senator O'MAHONEY. Surely. That may be made a part of the record.

(The chart referred to follows:)

Steam locomotive building industry (United States and Canada) ¹										Diesel locomotive building industry (United States) ²										
American Locomotive Co.		Baldwin	Lima		Other ³	Total steam unit ordered	Total diesel units shipped or ordered ⁴	Switchers				Road switchers								
Percent	(a)	Percent	(b)	Percent	(c)	Percent	(d)	Total	American Locomotive Co.	General Motors	Fairbanks-Morse	Baldwin	Total	American Locomotive Co.	General Motors	Fairbanks-Morse	Baldwin			
Percent	(a)	Percent	(b)	Percent	(c)	Percent	(d)	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent			
1934.....	37.6	26.1	21.8	11.5	611	4	100	20	4	100	346	349	44	39	17	6	64	25	11	100
1935.....	31.6	38.5	20.6	9.3	1,695	15	80	17	15	80	346	346	40	27	32	6	64	25	11	100
1936.....	42.3	38.4	12.9	6.4	3,701	26	80	38	26	23	149	149	21	77	2	104	56	16	11	22
1937.....	(a)	(a)	(a)	(a)	(a)	163	21	77	129	21	106	106	24	76	0	200	67	17	9	22
1938.....	(a)	(a)	(a)	(a)	(a)	188	(a)	(a)	197	33	155	155	33	61	6	239	29	52	7	16
1939.....	(a)	(a)	(a)	(a)	(a)	189	(a)	(a)	197	33	155	155	33	61	6	239	29	52	7	16
1940.....	(a)	(a)	(a)	(a)	(a)	189	(a)	(a)	197	33	155	155	33	61	6	239	29	52	7	16
1941.....	37.6	26.1	21.8	11.5	611	4	100	20	4	100	346	349	44	39	17	6	64	25	11	100
1942.....	31.6	38.5	20.6	9.3	1,695	15	80	17	15	80	346	346	40	27	32	6	64	25	11	100
1943.....	42.3	38.4	12.9	6.4	3,701	26	80	38	26	23	149	149	21	77	2	104	56	16	11	22
1944.....	46.7	34.6	6.0	12.7	1,174	372	49	33	35	5	400	400	63	5	32	6	64	25	11	100
1945.....	44.4	30.5	12.9	12.2	2,291	372	49	33	35	5	400	400	68	5	32	6	64	25	11	100
1946.....	26.3	47.6	26.1	26.1	514	201	38	35	201	38	372	372	49	33	32	6	64	25	11	100
1947.....	3.0	72.4	24.6	24.6	232	2,403	47	36	878	35	878	878	35	47	16	104	56	16	11	22
1948.....	2.8	91.8	5.4	5.4	352	2,402	47	36	954	35	954	954	35	47	16	104	56	16	11	22
1949.....	11.8	13.3	86.7	86.7	15	1,908	650	28	1,908	650	650	650	28	47	31	239	29	52	7	16
1950.....	42.9	67.1	88.2	88.2	17	4,174	1,142	19	1,142	19	1,142	1,142	19	48	27	1,240	28	57	9	7
1951.....	42.9	67.1	88.2	88.2	17	3,640	1,102	19	1,102	19	1,102	1,102	19	48	27	1,240	28	57	9	7
1952.....	1952	1952	1952	1952	15	1,868	396	26	396	26	396	396	26	48	19	1,075	16	78	3	2
1953.....	1953	1953	1953	1953	15	1,868	396	26	396	26	396	396	26	48	19	1,075	16	78	3	2
1954.....	1954	1954	1954	1954	15	1,868	396	26	396	26	396	396	26	48	19	1,075	16	78	3	2

See footnotes at end of table.

Diesel locomotive building industry (United States) *

Road switchers 2,000 and 2,400 horsepower					Road freight					Road passenger				
Total	American Locomotive Co.	General Motors	Fairbanks-Morse	Baldwin	Total	American Locomotive Co.	General Motors	Fairbanks-Morse	Baldwin	Total	American Locomotive Co.	General Motors	Fairbanks-Morse	Baldwin
	Percent	Percent	Percent	Percent		Percent	Percent	Percent	Percent		Percent	Percent	Percent	Percent
1934														
1935														
1936														
1937														
1938														
1939														
1940					8		100							
1941					12		100							
1942					20		100							
1943					46		100							
1944	4				125		100							
1945				100	377		95							
1946					712		75							
1947				45	924	20	77							
1948	67		30	23										
1949	55	31	47	22	1,238	14	82							
1950	21		86	14	1,624	6	84							
1951	49			32		10	82							
1952	14		43	57	1,245	11	90							
1953	10		100	4	411	25	73							
1954	47		96		239	11	87							
					85		100							

* It was not practical to exclude Canadian orders from steam locomotive statistics because detailed records of steam locomotive orders are not readily available.

* Railway Age's estimates of orders for diesel locomotives (600 horsepower and over) from Canadian subsidiaries of American Locomotive Co., General Motors and Fairbanks-Morse (which did not have Canadian subsidiary until 1952) show in the aggregate, the following: 0 in 1947; 20 in 1948; 92 in 1949; 81 in 1950; 190 in 1951; 307 in 1952 (including orders of Fairbanks-Morse's subsidiary); and 82 in 1953. Baldwin's orders for export (presumably including Canada) show: 21 in 1950; 63 in 1951; 58 in 1952; and 20 in 1953.

* Unaffiliated Canadian locomotive shops; railroad shops; Vulcan; H. K. Porter; Deserport.

* Diesel figures for 1934-44 are for shipments; figures for 1945-54 are for orders.
 * Unavailable.
 * Source for figures is American Locomotive Co., unless otherwise indicated.
 * Source: Railway Age; steam locomotive statistics for 1946-53 include entire export market.

Mr. BURNS. I would also like to have made a part of the record three additional schedules, one, "Inventory of Diesel Motive Power in Service, January 1, 1955," "Locomotive Purchases, 1947 to 1954, Inclusive—Domestic," and "Domestic Locomotive Sales, January 1 to October 17, 1955."

(The schedules referred to follow:)

Inventory of diesel motive power in service, Jan. 1, 1955

	Number of units in various horsepower classes													Total	Percent
	3,000	2,500	2,400	2,250	2,000	1,800	1,750	1,600	1,500	1,350	1,200	1,000	Under 1,000		
EMD.....	1	-----	28	479	681	6	692	23	8,676	1,152	1,333	1,174	947	15,192	61.7
Alco.....	-----	-----	-----	106	168	-----	164	1,687	1,029	-----	4	2,034	697	5,889	23.9
Baldwin.....	38	11	35	79	79	-----	-----	436	240	-----	481	970	308	2,698	10.5
PN.....	-----	-----	75	-----	250	-----	-----	228	32	-----	188	193	-----	864	3.9
Total.....	39	11	138	585	1,178	6	856	2,372	9,977	1,152	2,006	4,371	1,952	24,643	100.0

Source: Railway Age.

Locomotive purchases, 1947 to 1954, inclusive—Domestic

	Aloc	BLH	EMD	FM	Total
1954.....	152	30	729	58	969
Percent.....	15.7	3.1	75.2	6	100
1953.....	303	104	1,316	101	1,824
Percent.....	16.5	5.7	72.1	5.5	100
1952.....	382	100	1,148	69	1,699
Percent.....	22.5	5.9	67.6	4	100
1951.....	774	451	2,279	164	3,668
Percent.....	21.2	12.3	62.1	4.4	100
1950.....	710	563	2,750	220	4,243
Percent.....	16.7	13.3	64.8	5.2	100
1949.....	357	231	1,127	58	1,773
Percent.....	20.1	13.1	63.5	3.3	100
1948.....	594	374	1,456	132	2,556
Percent.....	23.4	14.6	56.9	5.1	100
1947.....	637	261	1,312	170	2,380
Percent.....	26.7	11	55.2	7.1	100

Domestic locomotive sales, Jan. 1 to Oct. 17, 1955

	Electro-Motive division	American Locomotive Co.	Baldwin-Lima-Hamilton	Fairbanks-Morse	Total
600/900 switchers.....	17	13	-----	-----	-----
1,200 switchers.....	28	8	11	27	-----
1,200 lightweights.....	-----	-----	3	-----	-----
1,600 to 1,750 O. P.....	440	58	7	8	-----
1,600 to 1,750, 4 and 6 H-O. P.....	52	14	2	10	-----
1,600 to 1,750 passenger and freight.....	51	-----	-----	-----	-----
2,250 passenger.....	10	10	-----	-----	-----
2,400 T. H.....	-----	5	-----	11	-----
Total units.....	598	108	24	56	786
Total horsepower.....	937,500	179,700	32,400	87,600	1,237,200
Percent units.....	76.1	13.7	3.1	7.1	100
Percent horsepower.....	75.8	14.5	2.6	7.1	100

Source: Railway Age.

	1,000 to 1,200 horsepower switcher	1,500 to 1,750 horsepower road switcher
Prior to May 1946.....	¹ \$78,500	-----
May 1946 (15 percent increase).....	89,500	125,000
August 1947 (6 percent increase).....	94,850	129,000
August 1948 (8 percent increase).....	102,500	140,500
April 1949 (5 percent decrease).....	97,500	134,000
December 1950 (5 percent increase).....	102,500	142,000
November 1953 (6 percent increase).....	² 108,000	³ 154,000
1955.....	108,000	154,000
1947.....	94,850	125,000
Increase (percent).....	14	22

¹ 1,000 horsepower.² 1,200 horsepower.³ 1,750 horsepower.⁴ Roller bearings: \$3,000 included in price.

Mr. BURNS. Mr. Vanderbilt, you are familiar with these charts that I have just listed?

Mr. VANDERBILT. Yes; we are.

Senator O'MAHONEY. Mr. Burns, may I interrupt you for just a moment. I want to have a conference with the staff.

(Discussion off the record.)

Mr. BURNS. Mr. Vanderbilt, this first schedule entitled "Inventory of Diesel Motor Power in Service as of January 1, 1955" indicates

that EDM, which I understand, is the Electro-Motive division of General Motors—

Mr. VANDERBILT. Right.

Mr. BURNS (continuing). Has on the road 15,192 locomotives, which amount to 61.7 percent; and that Baldwin has 2,598 or a total of 10.5 percent. Does that mean—that is the inventory of locomotives on the road in the United States as of January 1, 1955?

Mr. VANDERBILT. Right.

Mr. BURNS. And the second sheet marked "Domestic" shows the total of purchases each year, with the percent for all types of diesels, which was probably, to some extent, a compilation of the total figures shown on the previous sheet which had them broken down?

Mr. VANDERBILT. That is right.

Mr. BURNS. And the third sheet is the figures bringing sales up to date of October 17, 1955?

Mr. VANDERBILT. Right.

Senator O'MAHONEY. Are there any other questions to be asked of Mr. Vanderbilt and his associates?

Mr. BURNS. That is all I have, Senator.

Senator O'MAHONEY. Do you have anything else, anything in addition, to say, sir?

Mr. WATT. No; nothing.

Mr. VANDERBILT. Nothing at all.

Senator O'MAHONEY. Any expression of hope or regret?

Mr. VANDERBILT. We always live in hope.

Senator O'MAHONEY. Thank you very much. We are most appreciative of your presentation.

Well, Mr. Lewis, if you will be seated.

Mr. BURNS, are you ready to proceed?

Mr. BURNS. Yes. Mr. Lewis has prepared a statement as a result of questions we have asked him, and I think if he wishes he may proceed with his statement.

Senator O'MAHONEY. These are the questions asked by the staff?

Mr. BURNS. Yes.

Senator O'MAHONEY. During conferences previous to the hearings?

Mr. BURNS. That is right.

Senator O'MAHONEY. Very well.

**STATEMENT OF WILLIAM F. LEWIS, VICE PRESIDENT IN CHARGE
OF MARKETING, ALCO PRODUCTS, INC.; ACCOMPANIED BY W. J.
BOLTE, GENERAL COUNSEL, AND BRUCE BROMLEY, ATTORNEY**

Mr. LEWIS. All right, sir.

Senator O'MAHONEY. Mr. Lewis, will you give your name to the reporter and state the position you occupy, what company you represent, and then the facts you would like to lay before us?

Mr. LEWIS. All right, sir. My name is William F. Lewis. I am vice president of marketing, in charge of marketing, at Alco Products, Inc., which, until April of this year, was known as the American Locomotive Co. I have been an officer of Alco since 1951, and have been selling diesel locomotives for the past 22 years. I might say, Mr. Chairman, they have been pretty rugged 22 years, too. I would like to go ahead with my statement if I may.

I am before your subcommittee because Alco was asked to have a representative here today who was familiar with competitive practices in the locomotive industry. We are pleased to cooperate with you in your study, but before answering your specific questions I would like to submit this brief statement to put the facts in perspective and, perhaps, to conserve your time.

The short answer to the question as to whether there is competition within the locomotive industry is that there is plenty of it; and it's tough, and awfully tough.

I want to follow that statement immediately with this point: Alco Products no longer is only a locomotive builder; and this is why our corporate identity was changed with the approval of our shareholders in April of this year. We now produce some 3 dozen products for 11 different industrial markets. We cannot say, in all sincerity, that competition in the locomotive industry is any tougher than in any of these other businesses in which we operate.

I believe that we can gain some perspective in examining the locomotive industry through a brief chronology.

There have been two basic patterns to the locomotive industry.

One might be described as the steam era, the other the diesel era. Two existing companies today participated in both eras, Alco and Baldwin, along with a later Baldwin subsidiary, Lima Locomotive Works. Alco has built more locomotives than any other company in the world; about 80,000, since 1901 when the company was first organized. Of course, most of these were steam locomotives.

The introduction of the first successful diesel locomotive in 1924 marked the first successful revolution in rail motive power since the iron horse was invented. Alco produced this first diesel locomotive at its Schenectady shops in 1924, and that first diesel was in service with the Jersey Central Railroad until about a year ago.

I would like to make a comment here, if I may, that I do not wish to have this locomotive confused in any way, this diesel locomotive, with the so-called gasoline rail car which also was being produced in that area of time.

This was a diesel electric, not a gasoline engine.

The diesel era was slow to develop, primarily because the diesel engine available at that time was heavy and large. However, the very weight of the first locomotive diesel engines was an advantage in switching service, since the additional weight on drivers enabled the diesel switchers to haul more freight cars more easily. Therefore, the production of diesel switchers continued, with more and more railroads learning of the substantial advantages of this new type of switching motive power.

As early as 1927, Alco was engaged in designing a diesel engine which would be lightweight and compact in size, and we produced the first experimental diesel locomotive developed for passenger service in 1929. It was not until the midthirties, however, that sufficiently light and compact diesel engines were developed for passenger service, and it was not until 1940 that the freight diesel locomotive, as we know it today, was produced. This is a significant point—for freight locomotives at that time comprised about 75 percent of the total market potential for diesels. This meant that at the threshold of World War II, the diesel era, as such, still lay ahead for the locomotive industry.

For a full appreciation of this fact, let us quickly examine the composition of the motive-power industry of United States class I¹ railroads as of December 31, 1941. At that particular benchmark, there were 41,771 locomotives in service on United States class I railroads. Of this total, 39,624 were steam locomotives and 1,267 diesel. Of the diesel group, slightly over 1,000 were switchers, with Alco the manufacturer of a substantial share. That brings us to the conclusion of what might be termed the pioneering era of the diesel.

The basic explanation of General Motors position as the largest producer of diesel locomotives lies in an understanding of what occurred in the diesel's second era; the war period. By that I mean the World War II period, and these remarks, I think, are very important.

Alco, as the originator and major producer of the diesel switcher, was restricted by the Government material allocations during the war period to the manufacture of diesel switchers. We also produced steam locomotives and a multitude of war products, primarily tanks and other ordnance weapons—our company, as you may know, ranked among the first dozen ordnance producers in World War II. On the other hand, General Motors was given the assignment by the Government to turn out road diesel locomotives at a high production level. For a full appreciation of this situation, I would like to emphasize that Alco at the end of 1941 had virtually completed the engineering on what would have been the first fully complete line of diesel locomotives of an entirely new design.

The headstart which General Motors gained in the road diesel locomotive field from its protected position during the war was tremendous. As of December 31, 1945, there were approximately 1,500 road freight or diesel road passenger diesel locomotives in service distributed among about 35 class I railroads, and almost all of this number had been built by General Motors. The war years had allowed GM to eliminate many of the so-called bugs inherent in any new product design. The various railroads which had acquired GM road locomotives during the war quite normally were inclined to favor GM in new diesel purchases for road service in order to simplify the locomotive servicing and maintenance of a complicated new product.

This brings us to the third era of the diesel locomotive—that is, the postwar period. It is a little realized fact that diselization of American railroads occurred largely since World War II, most of it crowded into the 8 years from 1946 through 1953. In that brief period, approximately 19,000 diesel locomotive units went into service on American railroads, the largest number of locomotives by far ever to be produced in such a short time.

Our competitors were then and still are GM, Fairbanks, Morse, and Baldwin.

Alco introduced its war-delayed line of diesel locomotives in 1945-46 and it was an instant success. We invested approximately \$20 million in the conversion of our Schenectady, N. Y., plant to provide adequate facilities for the production of this new diesel line. In the 8-year period from 1946 through 1953, our company turned out approximately 5,000 diesel locomotive units; a record which speaks for itself. In many of those years we produced at capacity level, at times reaching

¹ Railroads earning more than \$1 million gross a year.

a peak of 51½ diesel locomotive units a working day, or more than 100 locomotives a month. Production of this capacity requires an obviously high level of efficiency, and we certainly have every reason to be proud of Alco's diesel locomotive output record.

The sharp drop in locomotive orders in the last half of 1954 brought with it many problems in reducing volume output to less than one-fourth of what it had been at its peak. At that particular time, United States class I railroads were more than 80 percent dieselized. Our company had known that the market would be saturated in perhaps 3 years, assuming the then existing output levels, but the drop in general business activity at that time found the railroads postponing many capital improvements and expenditures.

Senator O'MAHONEY. When was it that you foresaw the saturation in 3 years?

Mr. LEWIS. Sir?

Senator O'MAHONEY. You say you foresaw saturation of the market in 3 years.

Mr. LEWIS. For new locomotives; yes, sir.

Senator O'MAHONEY. What was the beginning of that period? When did you reach that conclusion? You were looking forward from what year to what year?

Mr. LEWIS. Well, I would say in that time, Senator, that it was in 1953, and through 1956 into 1957, in that 3-year period.

Senator O'MAHONEY. Thank you.

Mr. LEWIS. Yes, sir. To bring our statistics up to date, we find that as of January 1, 1955, there were 25,325 diesel locomotive units in service on class I railroads. Of this total we estimate that 15,192 or approximately 60 percent were produced by General Motors, 6,571 or approximately 26 percent by Alco, 2,598 or approximately 10 percent by Baldwin and 964 or 4 percent by Fairbanks-Morse.

At the present time we believe there is a market for approximately 5,000 new diesel locomotive units to be produced before complete dieselization of American railroads is achieved. Of course, complete dieselization will not end the locomotive business. As diesels age in service, they require replacement parts from the original locomotive manufacturer. Furthermore, many railroads now find it wise to have their older diesel locomotives rebuilt by the manufacturer to incorporate the latest designs, thus obtaining an up-to-date locomotive at far below the cost of a new unit. We are now also entering the era, we believe, when the oldest diesel locomotives have about completed their economical service life and will need to be replaced by new units.

How much of the remaining market for new diesel locomotives Alco will obtain is, of course, an unknown. We are confident we can go after this business in competition with General Motors or any other builder and obtain a significant share.

That is all I have to read.

Senator O'MAHONEY. Mr. Burns?

Mr. BURNS. May we go off the record?

(Discussion off the record.)

Mr. BURNS. We have a chart showing the steam locomotive shipments and diesel locomotive shipments from 1934 to 1954. Are you familiar with that chart?

Mr. LEWIS. Yes; I have it.

Mr. BURNS. You have a copy of that?

Mr. LEWIS. Yes.

Mr. BURNS. Was this furnished to us by your company?

Mr. LEWIS. Yes, sir.

Mr. BURNS. Can you tell us the source of the information on this chart?

Mr. LEWIS. The source of the information, you mean for the complete report, Mr. Burns?

Mr. BURNS. Do those footnotes at the bottom give the source for each of the—

Mr. LEWIS. Yes, sir.

Mr. BURNS. So the chart itself does show the source?

Mr. LEWIS. Yes, sir.

Mr. BURNS. Well, now, this shows under the diesel section on switchers that in 1934 your company was the only one making diesel switching engines; is that correct?

Mr. LEWIS. Yes, sir.

Mr. BURNS. And that year you apparently made four?

Mr. LEWIS. That is right.

Mr. BURNS. From that time down to 1940 your percentage, as distinguished from numbers of the switching diesels sold, was down to 26; whereas General Motors was up to 64?

Mr. LEWIS. That is right.

Mr. BURNS. Can you tell us what factors caused General Motors to get that large percentage of that particular type of business which you were in before they entered it?

Mr. LEWIS. Well, we, in 1934 were—let me put it this way—trying to ride two horses. One was a pretty proven racehorse and the other was a young colt, and the young colt was the diesel.

The diesel at that time was rather an unknown, and we took it upon ourselves to promote the engineering and the construction of the diesel and, as in all new products, the industry was a little slow to accept it.

At that time, a few of the next 5 or 6 years, we were not tooled up to make the diesel locomotive because at that time we were primarily a steam locomotive builder.

We were limited. We built the locomotives by strong backs and blood, sweat, and tears. I think they were actually a handmade product.

We were not keyed up for what we would term today as mass production. We were uncertain about the market, and we were trying to develop the market.

On the other hand, it was in 1935, as I recall, after General Motors had purchased the Electro-Motive Co., that they had built or started construction of their plant at La Grange, Ill., which was tooled up right from the foundations to the roof for the sole purpose of building diesel locomotives only.

And there, as I recall, at their plant was produced—which was completed in late 1934 or early 1935, when they started building locomotives out of that plant a hundred percent their own manufacture in 1935.

I think this chart will show that from then on, because of their tooling and all, it was my belief that they were able to probably produce more locomotives than we could at that time because of our manufacturing facilities.

Mr. BURNS. Well, now, there was a period, say, 6 years from the time General Motors started until the war restrictions, wartime restrictions, became a factor in hindering the development of diesels by your company and Baldwin.

During that entire period, were you in a position to develop and go after diesel locomotive business if you chose to do so?

Mr. LEWIS. Yes, we could, with limited facilities, Mr. Burns; yes, we did.

Mr. BURNS. Were you able to sell locomotives that you were making, diesels you were making, at a competitive price with the mass-produced General Motor diesels?

Mr. LEWIS. Yes, sir; we were.

Mr. BURNS. Even though you did not have the advantage of their type of operation?

Mr. LEWIS. That is right.

Mr. BURNS. Was there anything in the performance of your locomotives, your diesels, compared with General Motors, which enabled them to obtain that increasing percentage of the market?

Mr. LEWIS. No, sir; not to my knowledge.

Mr. BURNS. Do you feel that your problems in developing your sales in a market first were encountered when the war restrictions terminated and you embarked on a broad diesel program?

Mr. LEWIS. Well, we had started, as I said in my statement, we had started in the thirties to develop a road passenger locomotive, and we had built some road passenger locomotives—I did not specifically state that—but we were just getting into our tooling facilities at Schenectady.

We had brought out, we had engineered, a design of a lightweight compact diesel engine for road service.

Unfortunately, it was on paper at the time that the war broke out, and we had not had the time to assemble or accumulate all of our tooling to go into manufacturing.

Of course, when the war period broke upon us, all restrictions for tooling for any items that were not necessary to the war effort were stopped. But we had to delay and postpone a development and the building of the first diesel engine of this new design of ours which we had completed approximately 1939 or 1940.

Mr. BURNS. You have already pointed out in your statement that one factor which you had to meet at the end of the war was that General Motors had obtained an advantage in the manufacture of freight diesels.

Mr. LEWIS. Yes, sir.

Mr. BURNS. Which was a very substantial part of the business.

Now, were you able to overcome the advantage which General Motors had in that type of locomotive?

Mr. LEWIS. Eventually we were.

As I said, they had about 4 to 5 years of a start on us. We had to accumulate our toolings to go into the manufacture of this engine in 1945, and we produced our first locomotive of this new design in late 1946.

Naturally, with the new product it takes some time to develop it and, particularly, to gain its acceptance by your customers.

We were able to do this over the period of the next 2 or 3 years, and I think we were quite successful in getting it accepted on the railroads.

Mr. BURNS. Well now, this chart shows that your development, your sale of road freight diesels in 1946, when you commenced to make them, was 20 percent of the total, and decreased down to 6 percent in 1949, went up to 25 percent in 1952, and then, according to this chart you shipped none in 1954.

Mr. LEWIS. Yes.

Mr. BURNS. Have you any explanation of this wide variation in the percentage of the market which you were able to obtain in this postwar era.

Mr. LEWIS. In the road freight?

Mr. BURNS. Yes.

Mr. LEWIS. Well, I think this chart—and I think it needs some explanation, Mr. Burns—shows that in 1946 and 1947 the road freight locomotive that was known at that time was what we call an A and a B unit. They were all enclosed. The B unit was sort of a boxcar type. That was used primarily and exclusively in road freight operations.

Then we came along in 1947—1946 really—on the development of the road-switcher type of locomotive. As you will see here, we first introduced that in late 1946 and early 1947.

Now, then, at that time in 1947, and now going into 1948, approximately 90 percent of the market for main-line road-freight services could be satisfied by the road-freight type of locomotive, and the other 10 percent probably by the road switcher. We developed the road-switcher-design locomotive.

Over a period of years we proved that our design was right and that there was a very flexible type of locomotive that could be used in either switching or main-line road-freight service. It was a cheaper locomotive to our customers by approximately \$20,000 over the road-freight A type.

So over a period of years the road-freight type of A and B unit was gradually supplanted by the road-switcher type of locomotive, and I think that is one reason why you will find down through the last years of the road freight, maybe the last 5 years—you can see, with the exception, perhaps, of 1950 or 1951, when those were the 2 largest years we had, but you will see the percentage of the road-switcher type locomotive increasing while the road-freight type, the percentage is decreasing, and that is—it was merely—it was not the market—it was the type of locomotive being offered for that type of service.

Mr. BURNS. Well, the figures on road freight do show a decline.

Mr. LEWIS. Yes, sir.

Mr. BURNS (continuing). Beginning with 1950 down to a very small amount in 1954.

Mr. LEWIS. Yes, sir.

Mr. BURNS. But the figures for road switchers show that after the war in 1946 you had 64 percent; you went up to 67 percent in 1948; and then went down rather consistently, except for 1 year until you, in 1954, had 14 percent.

Mr. LEWIS. Well, I think we can explain that, because the road switcher was replacing the road freight. They were interchangeable in service. You could operate them together, two types of locomotives together, as one locomotive. One locomotive could even consist of 2, 3, or 4 units coupled together.

Again the diesel engine, the trucks, the motors, the generators, the control equipment were all interchangeable with the road freight type, and again the historical roles—and I would like to bring this in—General Motors had—that General Motors had after the war period, and they were historical roles, where they have locomotives on some 35 class I railroads because of the similarity in maintenance and operation, they kept with one manufacturer.

I think that explains that, Mr. Burns. It may be a little confusing on that chart. I do not know whether I have explained it clearly or not, but I think that is an explanation for it; at least it may clarify the picture a little bit.

Mr. BURNS. Well, you indicated that you have been able to sell about 5,000, I think it was around 5,000, diesels, and the bulk of them had been sold since the war when you got into production?

Mr. LEWIS. Yes. We have sold about 6,500 for domestic use, a little over 6,500, and about 5,000 of those in that period since the war.

Mr. BURNS. And this chart seems to indicate that your sales percentage of the market have decreased in all three of these classifications, the road switchers, the road freight, and the road passenger.

Mr. LEWIS. The passengers—well, while you can take, I will say, the percentages in 1946 and 1947 to compare them with 1953 and 1954, I think if you will analyze these percentages a little closer, you will see there is quite a fluctuation in these percentages.

They are up and down. They have the peaks and valleys.

I think you can see in 1946 and 1947 with, perhaps, across the board on all types of locomotives that, perhaps, we had in the neighborhood of 14 percent of the business; and in later years we got up some years as high as 26, 28 percent, and then we dropped down to 19, and then we go back up. One year, I think, we had about 31 percent. Last year, in 1954, we were down to about 15 percent.

This year we are on the upward grade again, and I think we will end the year of 1955 with something between 19 and 20 percent of that market. So it is a fluctuating market, if you want to call it that, Mr. Burns.

Mr. BURNS. This chart indicates with respect to steam locomotives during the war years, your percentage of the market, the total market, apparently was close to 40 percent, a little above or a little below.

Now, was that approximately the percentage of the steam locomotive market which you had in the years prior to the war?

Mr. LEWIS. I would say, approximately, yes. I would think the percentages here are quite indicative of the years before 1941.

I think the average year was from 31 percent all the way up to 46 percent in 1944. As I say, over a period of years it would come close to that; yes, sir.

Mr. BURNS. And that was the principal business which was in steam locomotives prior to the war?

Mr. LEWIS. That is true.

Mr. BURNS. So that your 40 percent or so was close to 40 percent of the total locomotive market?

Mr. LEWIS. Would you say since 1900 or something like that, or would you want to take a period—

Mr. BURNS. I mean in the period, say, 10 years prior to the war.

Mr. LEWIS. To the war? I would say this in round numbers; yes, sir.

Mr. BURNS. Then according to this chart of domestic locomotive purchases, 1947 through 1954, we find the steam locomotive decreasing gradually until there are practically none, well even as early as 1949 there were only 15 units as compared to 1,608 diesels in 1950, 17 steam locomotives as compared to 4,000.

So that beginning around 1949 there were very little steam locomotives, there was very little steam locomotive business. It had all turned to diesels?

Mr. LEWIS. That is right. We went out of the steam locomotive business in 1948.

Mr. BURNS. Yes.

Mr. LEWIS. We could not maintain 2 plants building 2 products, and so we converted entirely to diesel locomotives.

Mr. BURNS. During that period beginning in 1948 up to date, your share of the total locomotive business has decreased from 23 percent down to 15.7 percent, according to this chart; and we have—I think this is a copy of—a chart which you furnished which has some different figures on it. Do you have it there?

Mr. LEWIS. Yes; I have it, Mr. Burns.

Mr. BURNS. I assume that a great many of the General Motors' sales were to customers which had historically been yours prior to the development of the use of the diesel on a large scale?

Mr. LEWIS. Would you say that again, sir?

Mr. BURNS. The sales of diesels by General Motors included customers which you had historically handled prior to the development of the diesel on a large scale?

Mr. LEWIS. Yes. You mean in the steam locomotive days?

Mr. BURNS. Yes.

Mr. LEWIS. Yes.

Mr. BURNS. You used whatever efforts you could in sales to hold on to those customers?

Mr. LEWIS. That is right.

Mr. BURNS. Well, now, what problems did you encounter in endeavoring to hold on to these customers to keep them for your own diesels which you were able to make after the war?

Mr. LEWIS. Well, of course, we had a reputation with these companies over a period of years where we would build a great many steam locomotives for them.

We tried to show them the advantages of our diesel locomotive design over competitors. We tried to show how the savings in diesel locomotives over the steam locomotives which, because of the nature of the two beasts, the diesel locomotive is much cheaper in the operating costs primarily because of the thermal efficiency of the two types of power.

We tried to show the railroad in some cases that they could almost pay for diesel locomotives over a period of, it was less than, oh, 5 to 6 years, from the savings in fuel costs alone, and we tried to design locomotives in that period that would try to meet their operating requirements; and we worked with a great number of railroads very closely in that period.

Mr. BURNS. Now, were there any railroad customers that you lost entirely during this development in the postwar era?

Mr. LEWIS. No, sir.

Mr. BURNS. You still managed to sell to all of your previous customers?

Mr. LEWIS. Yes, sir.

Mr. BURNS. In view of that historical position which you had with some of them, being their principal supplier, I suppose in some cases supplying all of their needs, there were some?

Mr. LEWIS. Some; yes, sir.

Mr. BURNS. Were there any advantages which General Motors had in dealing with them which aided them in competing with you?

Mr. LEWIS. Well, of course, we did not furnish steam locomotives—we did to the majority of the railroads at one time or another, that is, the American railroads—but on the coming in of the diesel locomotive I might say that they came out of the war period, again the big market for the diesel locomotive after the war was in road freight service, and I would say that during this war period that they had, of course, built some 1,200 or 1,300 road freight locomotives.

These railroads had started with them. Evidently they were satisfied with the product and, as a result, we classify that as sort of a historical customer.

It was historical, a historical customer, for General Motors. In some cases we were able to break down that resistance, and a good many of those roads did place orders with us, I mean after the war, after we developed our road type of locomotive.

Some of the railroads had not ordered locomotives during the war years, and they waited until, say, 1948, 1949, to start buying diesel locomotives.

We were fortunate in selling our product to those railroads, of which there are several, and since that time they have stayed with us, I would say, almost 98 percent. They have nothing but our locomotives on their property.

Mr. BURNS. Those were railroads which had not already started with General Motors?

Mr. LEWIS. That is right.

Mr. BURNS. Have you found that a railroad has any reluctance to use 2 different types of diesels of 2 different manufacturers?

Mr. LEWIS. Yes. In some cases you find that, because I think it is particularly true of the smaller railroads where a few units would completely dieselize their operation.

Again, it is a problem of training their personnel, and the maintenance of these locomotives, instructing their crews, their engineers and firemen in the running, the operation of the locomotives, and we have had that argument thrown at us many times and it has been difficult to combat in some cases.

However, we do not believe in that philosophy, and we have endeavored in all cases to try to convince railroads they should have at least 2 sources of supply for their locomotives, in some cases even 3.

We have been successful in the majority of the cases, and we have been awarded business for—even if they are historical General Motors customers, we have been awarded business, say, where they could put it on out on a division where it would be all Alco power so that the personnel on that one division would be only responsible for Alco power and, of course, would be trained to maintain that type of power.

There have been very few railroads that have not gone along with

that reasoning, and some very few of them have nothing but, say, General Motors.

On the other hand, we have several railroads that have nothing but our type power, 100 percent.

Mr. BURNS. Have you encountered in any way the problem of meeting the situation which has been referred to of General Motors being the largest single shipper by rail in the United States, and thus being a customer of the railroads to whom it is trying to sell its products?

Mr. LEWIS. Well, I think with the size of General Motors, I think it is recognized that they must have a tremendous amount of traffic.

Now, how they divide their traffic between the railroads and the buslines or the trucklines, I have no idea. It does not concern me.

It may be important in the placing of business. I think of it in this way—well, those are the facts of life that you might as well look at in that I think that in the business world today you try to help each other.

Now, to what extent this feeling has been on the railroads I cannot say. I have not had any railroad official admit to me that that is the only reason he places business with General Motors. I think it has some consideration, yes; but I do not think it is fully every consideration they use in placing the business.

Senator O'MAHONEY. Mr. Lewis, will you make a little more clear—

Mr. LEWIS. Yes, sir.

Senator O'MAHONEY (continuing). This principle of helping one another that you say exists in the business world today?

Mr. LEWIS. Well, I think that, Senator, it is recognized that we like to do business with our friends, particularly if our friends are responsible and reliable.

I think business in any field—I do not mean to refer to the railroad industry or the railroad-manufacturing industry—but you might take it in any industry that is in existence, I think it is only—you do business through friends.

Senator O'MAHONEY. And through customers?

Mr. LEWIS. And through customers; that is right.

Senator O'MAHONEY. And the bigger the customer the better the friendship?

Mr. LEWIS. That might be true in many cases; it might be true.

Mr. BURNS. Well, now, I have indicated and I have pointed out that these statistics do show General Motors, since the time it entered the business, approximately 20 years ago, has risen to the point where it has 61 percent, approximately, of all the locomotives now in use, and is selling approximately 76 percent a year.

What do you attribute this rapid growth of the General Motors Corp. to in this comparatively heavy industry?

Mr. LEWIS. Well, I think—well, go back to capacity and go back to historical customers. They, through their production-line methods for which they are noted, are set up for mass production. I can remember when I was out in the field and was slugging it out pretty heavy in those days—now I have got an office job and I do not like it too well—but we were slugging it out pretty heavy, and I know at the time there were periods in 1948, 1947, again in 1950, even when we were up to a maximum production of five units a day, that in

reality we had to turn down business because we could not make deliveries.

We did not have production capacities to make deliveries that our customers wanted.

On the other hand, General Motors at one time at their two plants, both LaGrange and Cleveland, were up to something between 10 and 11 locomotive units per day and, as a result, they gained a better foothold, I might say, on some of the railroads, and again you get back—I keep going back—to the historical customer.

You are getting to the point now where the railroads are completely or almost completely dieselized. We said in there about 80 percent. We thought in 1953, with the carloadings as they were then that we could only foresee about 3 more years.

All right. The general economy of the country took an upturn in late 1954 and 1955 and, as a result, the railroads are coming back in now, those which were, I would say, dieselized, they are coming back into the market now for just a few units to take care of their increased business.

Again they are filling out their fleet, the same type of locomotives they had in the majority before, and you very seldom see any large locomotive orders placed today as there were back in the 1950's, when maybe roads would place orders for anywhere from a hundred to three hundred units in one order.

Today the orders are in 2's, 10's, 15's, and if somebody places an order for 25 today, it is a pretty large order. It is primarily to fill in their fleet.

Senator O'MAHONEY. Mr. Burns, may I interrupt at this moment? I am called to another conference with respect to another aspect of the Judiciary Committee. We will take a short recess.

(Short recess.)

Senator O'MAHONEY. We shall resume our session.

Mr. Burns, you may proceed.

Mr. BURNS. If the market for new locomotives is becoming saturated, then will the major interest, at least in the near future, be in replacement parts?

Mr. LEWIS. Yes, sir. We feel so over the period of the next few years; yes, sir.

Mr. BURNS. Does that amount to a substantial sum of money in annual business?

Mr. LEWIS. Yes, sir; it could be; yes, sir.

Mr. BURNS. I mean from the experience that you have had to date—

Mr. LEWIS. Are you talking about the parts business or the rebuilding?

Mr. BURNS. Replacement, replacement parts, repairs.

Mr. LEWIS. Of, yes; yes, that has been very important, and it has been very important that we, as a manufacturer, have provided our customers with off-the-shelf, so to speak, service.

We stock in our warehouses approximately 8,000 different parts, which we have in various warehouses throughout the country.

We recognized as far back as 1948 that it was going to be necessary for us to set up what we called renewal parts warehouses throughout the country to serve these customers.

It meant we were carrying their inventory for them in our warehouses. What they wanted was 24-, 48-hour delivery on parts, so we had to set up that service for them.

Today we have some five warehouses throughout the country, and we carry an inventory of several million dollars to serve our customers.

Again they insist upon it when buying locomotives, they insist upon having that service, and without that service I know that we would have received a smaller amount of the business, because we use it, frankly, as a selling tool.

Mr. BURNS. Well now, is it your expectation to sell road passenger diesels in the future?

Mr. LEWIS. Yes, we would like to. But the facts come down to this. I think that that market is saturated today for passenger locomotives. You will find a trend on the railroads today, they are taking passenger locomotives off of schedules because they are not economical to run.

I know we have several customers for passenger locomotives, and they have asked us now how to convert them into road freight locomotives because gradually there is less and less number of passenger trains being operated. I think that market is gone, road passengers.

Mr. BURNS. Now, the parts of your locomotives, are they interchangeable with General Motors' diesel parts?

Mr. LEWIS. No, sir; none whatsoever.

Mr. BURNS. You believe you would be able to hold on to the replacement business for those locomotives you have been able to put on the roads?

Mr. LEWIS. Yes, sir; by giving them good service we can hold on to them.

Mr. NEVILLE. Mr. Lewis—

Mr. LEWIS. Yes, sir.

Mr. NEVILLE (continuing). You have pointed out in your statement very clearly that one of the economic factors that placed you in a somewhat difficult position competitively was the order of the War Production Board giving to General Motors practically all of the diesel field and confining you and Baldwin Locomotive to the steam field in which you were the most proficient at the time.

Do you have any feeling about a situation of that type, whether some—

Senator O'MAHONEY. Mr. Neville, before we ask for conclusions from the witness, let us ask about the facts. When was that order issued?

Mr. LEWIS. Well, that was issued, Senator, in 1942.

Senator O'MAHONEY. In 1942?

Mr. LEWIS. Yes, sir.

Senator O'MAHONEY. What was the nature of the order?

Mr. LEWIS. It was the order where the War Production Board took over all the production activities of certain industries, and I think those regulations ended, if I am not mistaken, approximately July 1945.

Senator O'MAHONEY. Do you happen to have the designation of the order? It was an executive order, I take it, of the War Production Board?

Mr. LEWIS. Of our allocation, you mean, for materials? Is that it?

Senator O'MAHONEY. Yes.

Mr. LEWIS. NPA material controls.

Senator O'MAHONEY. I would like to identify the order itself.

Mr. LEWIS. Yes, sir. We can obtain that. We have it in our files.

Senator O'MAHONEY. You have?

Mr. LEWIS. Yes, sir.

Senator O'MAHONEY. Did you have any notice about it before it was granted?

Mr. LEWIS. That I am not familiar with, but I know we have that in our files.

Senator O'MAHONEY. Now precisely what did you say in your written statement about this order?

Mr. LEWIS. I had 2 or 3 paragraphs on it at the top of page 3, I think, Senator.

Senator O'MAHONEY. Does the sentence begin on page 2?

Mr. LEWIS. No, sir.

Senator O'MAHONEY. Read the sentence that you have in mind.

Mr. LEWIS (reading) :

The basic—

I am starting with the first sentence on page 3, sir—

explanation of General Motors' position as the largest producer of diesel locomotives lies in an understanding of what occurred in the diesel's second era—the war period. Also, as the originator and major producer of the diesel switcher, was restricted by the Government material allocations during the war period to the manufacture of diesel switchers.

Then we skip a sentence.

Senator O'MAHONEY. Yes.

Mr. LEWIS. All right.

On the other hand, General Motors was given the assignment by the Government to turn out road diesel locomotives at a high production level.

Senator O'MAHONEY. Now, the copy that I had, you see, was amended.

Mr. LEWIS. That is true.

Senator O'MAHONEY. And I was distracted and did not notice this.

I think this is a matter of very great importance, because in the construction of the War Production Board, the Government gathered industrial executives from the four corners of the country.

These leaders of industry were recruited to help win the war, and it was frequently alleged at the time that the War Production Board was staffed with employees of industry who, if they did not favor the particular companies from which they came, at least did not lean over backward whenever any matter affecting the interests of those companies was involved.

So this committee will want to know very completely the story of that order.

Apparently, according to your testimony, it changed the direction of the whole development of diesel engines. It placed a handicap upon the pioneers of the industry and gave a great advantage to the newcomer; am I right?

Mr. LEWIS. Yes, sir; we feel that way.

Senator O'MAHONEY. Is that your interpretation of it?

Mr. LEWIS. Yes, sir.

Senator O'MAHONEY. Will you please procure for the committee copies that you have, and the staff will check with the executive orders to determine what was done?

Mr. LEWIS. Yes, sir.

Senator O'MAHONEY. Thank you very much, Mr. Lewis.

Mr. BROMLEY. Senator, I think we should make it very clear we have no complaint about this. We feel that it was clearly in the national interest that this be done; isn't that right, Mr. Lewis?

Mr. LEWIS. Yes, sir.

Senator O'MAHONEY. You mean it was clearly in the national interest that General Motors should have the assignment by the Government to turn out road diesel locomotives at a high-production level?

Mr. BROMLEY. Yes, sir.

Senator O'MAHONEY. As against you?

Mr. BROMLEY. Yes, sir; because our skill at that time was in the switching business. We could do that best and most efficiently.

Senator O'MAHONEY. Very good.

But we are very much interested in the order just the same.

Mr. BROMLEY. Yes, sir.

Mr. LEWIS. Yes, sir.

Senator O'MAHONEY. Please obtain it.

Do you have any further questions?

Mr. BURNS. That is all.

Senator O'MAHONEY. We are very much obliged to you, Mr. Lewis, and to your associates for the evidence you have given, we are very much obliged indeed.

Mr. LEWIS. Thank you, sir. You have been very gracious to continue the meeting, Senator.

Senator O'MAHONEY. The committee will be unable to hear Mr. Hamilton tonight, and if he will be good enough to remain patient, why, we will hear him tomorrow morning.

The committee will assemble at that time. I understand that he does not have a prepared statement, but will be examined by the committee staff.

Thank you very much, gentlemen.

The committee stands in recess until 10 o'clock tomorrow morning.

(Whereupon, at 5 p. m., the subcommittee recessed to reconvene at 10 a. m., Thursday, November 10, 1955.)

A STUDY OF THE ANTITRUST LAWS

THURSDAY, NOVEMBER 10, 1955

UNITED STATES SENATE,
SUBCOMMITTEE ON ANTITRUST AND MONOPOLY
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met, pursuant to recess, at 10:15 a. m., in room 424, Senate Office Building, Senator Joseph C. O'Mahoney presiding.

Present: Senators O'Mahoney (presiding), and Kefauver.

Also present: Joseph W. Burns, chief counsel; Donald P. McHugh, assistant counsel; Joseph A. Seeley, assistant counsel; Gareth M. Neville, assistant counsel; and Jesse J. Friedman, economic consultant.

Senator O'MAHONEY. The committee will be in session.

Mr. Burns, are you ready to proceed with Mr. Hamilton?

Mr. Burns. Yes. Mr. Harold M. Hamilton.

Senator O'MAHONEY. Good morning, Mr. Hamilton; good to see you.

STATEMENT OF HAROLD L. HAMILTON, RETIRED VICE PRESIDENT, GENERAL MOTORS CORP.; ACCOMPANIED BY HENRY M. HOGAN, VICE PRESIDENT AND GENERAL COUNSEL

Mr. Burns. Mr. Hamilton, were you until recently an officer of General Motors Corp.?

Mr. HAMILTON. Yes.

Mr. Burns. Will you tell us what office that was and what your present position is?

Mr. HAMILTON. Well, I was a vice president of General Motors; and my present position is that of a retired vice president of General Motors.

Mr. Burns. I am going to ask you to speak just a little louder so that the people in the room who are interested may hear your testimony.

When did you first go with General Motors Corp.?

Mr. HAMILTON. In December, December 31 I think it was; that is correct, December 31, 1930.

Mr. Burns. Will you tell us very briefly the circumstances under which you went with General Motors?

Mr. HAMILTON. Well, I was president of the Electro-Motive Co., which was a company which I had founded several years before that, and this company and General Motors worked out an arrangement whereby General Motors bought the common stock of the company, and made of it a wholly owned subsidiary.

They bought the common stock of the Electro-Motive Co., all of it, and made a wholly owned subsidiary of General Motors out of this company, and then it continued as an independent corporate structure in which I was president, and I had been president, and continued to be president.

The corporate structure was retained until about 1942, and then at that time it was made into a division of General Motors, and the corporate structure dissolved, and from that point on I was a vice president of General Motors, and retained more or less the same position so far as the direction of affairs was concerned, for some time.

Mr. BURNS. What business was the Electro-Motive Co. engaged in at the time that it was acquired by General Motors in 1930?

Mr. HAMILTON. Well, the Electro-Motive Co. was incorporated for a very specific purpose, largely by me and some associates, and the purpose was to carry out and furnish the facility for developing my ideas of the use of the internal combustion engine as motive power for railway motorcars.

Mr. BURNS. What year did you form the Electro-Motive Engineering Co.?

Mr. HAMILTON. 1922.

Senator O'MAHONEY. May I ask who were your associates?

Mr. HAMILTON. At that time?

Senator O'MAHONEY. Yes; in the original incorporation.

Mr. HAMILTON. Well, one man by the name of Paul R. Turner, who was—I will give you his temporary background. Paul Turner was a salesman in the White Motor Co., and was working under my jurisdiction at the time. He came along with me and helped me form this company.

Senator O'MAHONEY. I understand that you were with the White Motor Co.?

Mr. HAMILTON. That is true.

Senator O'MAHONEY. Your position in that company was what?

Mr. HAMILTON. At that time when I left the White Co. to form this, I was wholesale manager of the so-called western district, which included about 11 of the Western States, with headquarters in Denver.

Senator O'MAHONEY. You were a Rocky Mountain operator at that time?

Mr. HAMILTON. At that time; yes, sir.

Senator O'MAHONEY. Well, I may say that I have driven up Boulder Canyon in a White Steamer.

Mr. HAMILTON. That goes back a long way.

Senator O'MAHONEY. Perhaps I should not have spoken so frankly. [Laughter.]

Mr. HAMILTON. Well, your memory is excellent, because those Steamers did not operate after about 1910 or 1911.

Senator O'MAHONEY. I know that very well.

Who else besides Mr. Turner?

Mr. HAMILTON. The other three were—they were the people brought into the incorporation by our attorney, and they are just, they were just names; I have forgotten who they were.

Senator O'MAHONEY. They were just dummies?

Mr. HAMILTON. That is right.

Senator O'MAHONEY. Mr. Hamilton, Mr. Turner, and three dummies organized this corporation?

MR. HAMILTON. That is right. They probably would not appreciate that appellation. [Laughter.]

Senator O'MAHONEY. I am sure that it has no application to their intellects, or to their personality qualities, but we all know that there is a great difference between natural persons and corporations.

MR. HAMILTON. Right.

Senator O'MAHONEY. They were dummies only in the sense that they were not active in the corporation?

MR. HAMILTON. That is true.

Senator O'MAHONEY. I do not wish to imply anything else.

Now, then, in what State was this company organized?

MR. HAMILTON. In Ohio.

Senator O'MAHONEY. What year?

MR. HAMILTON. 1922.

Senator O'MAHONEY. What was the name of the company, Mr. Burns, that was referred to yesterday by some of the witnesses?

MR. BURNS. Winton.

Senator O'MAHONEY. Winton. Was this independent of Winton?

MR. HAMILTON. Yes.

Senator O'MAHONEY. Altogether different?

MR. HAMILTON. Altogether different, no relation whatsoever.

Senator O'MAHONEY. Were these three other gentlemen affiliated with any other corporation engaged in the automotive industry in any way?

MR. HAMILTON. No; they were clerks.

Senator O'MAHONEY. They were clerks brought in by the incorporating lawyer?

MR. HAMILTON. That is right; they were clerks in his law office.

Senator O'MAHONEY. And had probably one share of stock each?

MR. HAMILTON. Yes, sir.

Senator O'MAHONEY. For the purpose of the incorporation?

MR. HAMILTON. That is right; to comply with the statute.

Senator O'MAHONEY. Very well.

MR. BURNS. Will you tell us what product you were interested in developing when you formed the Electro Motive Engineering Co., and the reasons which prompted you to leave the White Co. and commence this company of your own?

MR. HAMILTON. Well, in order to provide—in order to develop a connected story, to make a little sense to people listening, probably I should go back to about 1905.

MR. BURNS. Will you do it briefly, just to give us the main points which caused you in 1922 to form this company?

MR. HAMILTON. That is right. But to do that I have to supply a reasonable background and establish how my thinking developed and took form which resulted in a decision to make this move and form this company.

MR. BURNS. Will you do that, please?

MR. HAMILTON. About 1905, I am not being specific as to specific dates, but it is the period, the Union Pacific Railroad, largely under the instigation of Mr. Harriman, who was at that time important on that railroad, launched an enterprise, with the assistance of the mechanical department of the Union Pacific, and a man by the name of McKeen, to develop some form of a small rail motorcar—the name

was not given that way—but a small vehicle that could be used on the railroads to take care of light passenger train requirements in place of the steam locomotive and 2 or 3 cars, which was the conventional practice at that time.

This company evolved a very well-defined car that had a capacity of about 50 or 60 passengers, with a gasoline engine, and the necessary mechanical means of transmitting that power to a driver on the rail.

The railroad, through its subsidiary arrangement, which was known as the McKen Motor Car Co., between that period of about 1905 and the beginning of World War I, built and put on their own railroad, as well as the other so-called Harriman lines, and some other railroads, 7 other railroads, quite a number of those cars—probably, I do not know offhand—but I think in order of 150, 200 of them.

Now, then, another development got in motion about that time of this same character, and that was by the General Electric Co. They evolved a car of similar character, similar size in horsepower and in characteristics, but they used an electric transmission to transmit the power from the engine to the drivers instead of the mechanical transmission. They built some 80 or 90 of those cars during the period preceding World War I.

When the war came on all that activity ceased on the part of both companies.

Then during the war itself and following, shortly following the war, with many of the railroads in what they thought were in need of that sort of equipment, particularly the short line, the so-called short-line railroads of America, which means all of the railroads with less than a hundred miles of track in those days, got to different motor-vehicle builders, like the bus companies and the truck companies, got them interested so that there were quite a number of vehicles out on the railroads put together by the different truck companies that consisted of buses, converted to operation on rails by simply putting flange tires on the vehicle in place of rubber tires and making some other modification, not very extensive; so that at the end of the war there were quite a number of vehicles of that character operating on particular lines, particularly short lines, and so forth, over the country.

Now, my interest in this picture developed something like this: At the end of the war when I went—after my tour of duty that arose out of the war—I went back to the White Co.; I had been with them before the war—and I was assigned the district manager's job in Des Moines, Iowa, and I soon found about a half dozen or, in fact, about a dozen of these buses running on rails that had been sold by the White Co. in my territory.

I also discovered that they were giving us more trouble than any of the rest of the vehicles we had delivered, and our service people were spending most of the time trying to keep them running, so I got a quick introduction to that one.

As time went on, in order to make up my mind what was wrong and what we were going to do about it, I took a good look at the vehicle, spent a little time watching them operate, discussed the matter with our service people, and came to a firm conclusion that the vehicle was fundamentally wrong for operation on the rails, and there was nothing we could do to correct it except to rebuild them when they broke up, which occurred regularly.

I not only insisted that we would not sell any more, but that no more would be sold in my territory. I did not want our service people to have the responsibility of trying to keep them running.

At that moment I made up my mind as to what was wrong with any form of a mechanical hookup between an internal combustion engine and a steel wheel running on a rail. So much for that. That was 1919 that I talking about.

In 1920—I was then in the meantime made wholesale manager of the western district, which put me in Denver, Colo., and gave me all the Western States except the three coast States, put them all under my jurisdiction, and I found a lot of these vehicles running then.

So my headache increased rather than decreased.

But in the meantime, the White Co., in its search for business, decided to expand their motorcar program, and I did my best to discourage it, to the extent that I had an agreement with the president of the company that we would not deliver any more of that type of vehicle in my territory.

Now, during this time—and this may sound irrelevant, but it is not, you asked how I happened to get started—during this period, the territory that I had responsibility for included nearly all of the national parks, Glacier, Yellowstone, Rocky Mountain National, Mesa Verde, and a group of the Rocky Mountain parks. All of the motor-vehicle transportation in those parks at that time were fleets of White buses that we had sold, so we were in constant contact with these transportation companies; and in addition to that they had worked out coupon tickets so that all the railroads of the area sold tickets for passengers to circulate by the railroads through the park on another railroad through the next park, and so on.

So I was also in constant contact with the railroad people, particularly the passenger and traffic people, lived with them, traveled with them, and we worked out our problems jointly.

They were constantly saying to me, "Why don't you people build a vehicle like these buses that we ride in through Yellowstone or through Glacier, wherever we may have been; why don't you build us something like that that will operate on the rails so we can cut down our costs of operation on these small lightly loaded branches?", and so forth.

I told them it could not be done. It was not in the cards. We could not build a vehicle that could live, and I told them why. But the conversation on that one kept on until I realized, being primarily sales minded in the matter, realized that there was a tremendous opportunity for somebody to develop a vehicle of the right character, if they could develop the type, the correct vehicle, the market was ready and waiting.

The question was how do you do that. So my mind started exploring around on it.

Now, previous to my experience with the White Co., I had started as a youngster in railroading. I learned the operating side, at least the mechanical side, of railroading the hard way, and I had gone out of there with the White Co., so I understood railroads fundamentally, their operation and their problems, particularly from the rolling-stock angle.

So I felt I could evolve a design that would meet railroad requirements at that time.

I knew the story of the failure of the other efforts that had been undertaken, to some extent. I was not particularly familiar with General Electric at that time, but they had built a gas electric car; I knew about the McKeen car; I knew about all the modified motorcars, the rail buses, and so forth, which were really highway buses.

Well, it was my concept that what was needed was a transmission that could only be done electrically, and by a complete conversion of energy, for the benefit of the record, the introduction of a generator or dynamo and an electric motor in combination between the engine and the driver. That was a necessary element to accomplish the objective for two reasons: Not only to take the shock, the mechanical shock, that normally arises from the contact of the rails, the driver on the rails, but also to convert the horsepower and torque characteristics of an internal-combustion engine so that it is suitable for traction purposes on a railroad; a very difficult thing to do mechanically, and that is one of the reasons why the failures had occurred previously.

So I evolved what, in my opinion, was a vehicle that would function properly. Then I asked the White Co. for a leave of absence to make a survey to find out why somebody had not done that, and why, what seemed simple to me was not being done at the time.

I soon discovered on my survey trip that the General Electric had made such a vehicle and then discovered what I have told you earlier here.

Well then, the next step was to find out why they did not continue to make it, and why they were not acceptable, why the railroads were not buying them and using them.

I knew their interest in that sort of vehicle. So I made up my mind after a check with the railroads that had some of these General Electric cars, what was wrong with their particular approach to the problem.

Well, I, at least, decided this: That my solution was all right, and that what I proposed to do would improve on the General Electric's effort, and eliminate the weaknesses that had prevailed at that time, and that I could produce a motorcar that would be satisfactory and would meet the commercial requirements that these railroad men were talking about.

Senator O'MAHONEY. Were there any patents involved in the General Electric engine?

Mr. HAMILTON. No; nothing of any consequence at all because it was a very simple setup. It involved—I say patents, now I might be technically wrong. There were none on the engine, none on the generator, none on the motor, but they used what was known as a Ward-Leonard control, and there may have been patents on that device, but that was in common use in those days in lots of practices, particularly in ships.

Senator O'MAHONEY. Did your modification involve any patent?

Mr. HAMILTON. No. There may have been a minor 1 or 2, but not from our standpoint. If I am supposed to go that far into it, I can answer your question more specifically, Senator.

Senator O'MAHONEY. I think it is very interesting and very important.

Mr. HAMILTON. Because at a later date we get into that, and if you want more detail on that point, I would be delighted to supply all you want.

However, as I say, the starting at scratch to build a motorcar with me—I had no resources, except my own personal resources—was a difficult undertaking. But I decided the opportunity was so great that I could not ignore it. So I left the White Co. and decided to incorporate a company of my own. That was in the summer of 1922. The company was incorporated in August of that year, as we have indicated.

Well, I ran up against a lot of problems, which I will not attempt to cover, only in some detail here. I first went to one major electrical company, and their engineers said the idea that I had for electric transmission probably could be done with considerable development, and very likely be inefficient, so much so, that they would not go along with it unless I was ready to finance the research that was involved. I was not ready to do that.

So then I went to the General Electric Co., and I met a quick brushoff there at the outset because I met the higher officials, and their reaction was this: that they had made an effort of that kind, and that the total loss that the company wrote off was about \$1,500,000 in their effort, and they did not feel like they wanted to make another try in that direction.

However, there were people in General Electric, engineers primarily, that were left over and had been involved in the original development of the General Electric product that they had made, who still had faith in the whole program, and agreed with me as to why the General Electric car was not a commercial success, and was not accepted wholeheartedly by the railroads in view of the fact that they did want such an animal, or such a vehicle.

So by working backwards through this group of individuals, and all of them important engineers in General Electric's setup, we revived the general interest in the program, and eventually got the approval of the officers of General Electric to develop a generator with a control characteristic which I had outlined as required, but not enough of an electrical knowledge of my own to know how to do it.

That electrical knowledge, how to do it, was supplied by General Electric engineers. They thought they knew, and as time went on, it proved they did know how to do it, and we did it.

That is the point right at that part there, Mr. Senator. There may have been some General Electric minor patents involved in the technique of the control, and if so, they were General Electric patents and not ours. We had nothing to do with that angle. That was a highly scientific development.

In the meantime, I had taken a good look, and much to my surprise, discovered that there were no engines built in America at that time that were suitable for the job that we had laid out or for the requirements that we had set forth, as being necessary for this vehicle.

So, in order to carry out, however, the test of the first generator that General Electric was building, we needed an engine of certain characteristics.

I found such an engine, and bought one, and it was delivered to General Electric, and we put together the original test mockup, which was a small locomotive, electric locomotive, that was there, a switching engine that they worked over, and we put the engine and generator into it, and we ran a series of tests for a long time at the Erie Works of General Electric, and in that process, we developed definitely that

the transmission, which was what we were really serious about or were concerned with, would do what we wanted to do. It met all of the specifications that we had laid down, and the characteristic requirements at the outset.

However, the engine that we had hooked to this generator, and which we thought was the best engine available in America, had gone to pieces in about 90 days of just ordinary yard operations there in switching cars at the Erie Works of General Electric, so that left us flat.

Now, you understand, at that time we were not even thinking in terms of diesel. We were only thinking in terms of the gasoline engine, because the diesel was so far away from our picture at that time, so far as its state of development, as not even to be entertained. We were only thinking in terms of a gasoline engine.

Well, eventually, without going into all of the horrible details that went along with this, I made the acquaintance of what was then the general manager of the Winton Engine Co. in Cleveland, and I would like to digress here for just a moment.

There were inferences made here yesterday in the testimony that this little company, known as the Winton Engine Co., was of minor importance in the industry.

Now, the facts are that the Winton Engine Co., at that time, was one of the major diesel-engine producers in America, and was the company which made the relatively lightweight and fast-running type of diesel used in tugs, fishing boats, yachts, and so forth, at that period.

Senator O'MAHONEY. What year was that?

Mr. HAMILTON. The period I am talking about was 1922, 1923.

Senator O'MAHONEY. The Winton Co. also made automobiles, did it not, about that time?

Mr. HAMILTON. Not this company. That was a separate enterprise entirely. It is true that the Winton Automobile Co. was naturally, as most everybody knows, the company started by Alexander Winton, one of the pioneers in the automobile business, and he had two associates, Mr. Henderson and Mr. Brown. They had been together for years, and they built up the Winton Automobile Co.

Then along about 1916, Alexander Winton became very interested in the idea of building a diesel engine, and decided he wanted some diesel engines for his own yacht, so he built a pair of diesel engines in the automobile plant for his own yacht, and that intrigued him, and he thought he ought to have an engine plant or an engine company to build diesel engines for boats, and he organized this company of his own. It was a wholly owned affair, and it was completely separate and independent of the automobile company, not in anyway related, except, of course, he staffed it with people that he had taken out of the automobile company, but it had no relation to the automobile, other than that.

Senator O'MAHONEY. He was the head of each company?

Mr. HAMILTON. I beg pardon?

Senator O'MAHONEY. He was the head of both companies?

Mr. HAMILTON. That is right. But it was an important thing from the technological standpoint and from the development standpoint. In the historical development of the diesel engine in America, Winton made a major contribution at that time.

Senator O'MAHONY. Would it be proper to say that he might have been the pioneer of diesel development in this country?

Mr. HAMILTON. No, you cannot say that; you cannot say that.

There were a lot of firms pioneering, but most of them were all going in slightly separate directions.

Now, the first diesel engine, according to my reading of the history, the first pure diesel, and there is a lot of confusion as to what a diesel is in the mind of the public and the scientific world for that matter—but anyway, the first pure diesel manufactured in this country that I am aware of was built by Mr. Busch of Anheuser-Busch, in St. Louis.

He acquired, as I understand it, and I got this from the historical record, and if the record is correct and I am correct, from Selzer Bros. in Switzerland, a license to build an engine under Rudolph Diesel's patents, and he built himself a machine shop or a plant, if you like, eventually, in St. Louis, and thus the building of diesel engines in this country; and for a long time they were somewhat dominant, and were the only ones building a pure diesel.

There was very little, if any, if I am correct, any pure diesels built in this country until after Rudolph Diesel's patents expired, which began to be at 1911, and then we began to get into pure diesel.

There were a lot of modifications that took place in there, but they were not diesel engines; they were just half diesel engines.

Now, getting around to our program again, I went to the Winton Engine Co., which was there in Cleveland, got acquainted with their president, and told him what my problem was.

After looking over what they had to offer in the form of gasoline engines, they did build moderate-sized gasoline engines for boats and so-called marine engines at that time, but nothing they had to offer was suitable for our purposes.

The chief engineer, a man by the name of Salisbury, and Mr. Codrington, who was general manager at that time, and who agreed with me what we wanted to build was perfectly practical as an engine, and would be a good engine, and as long as we said it was suitable for our purpose, why, that was all right with them.

But at that time—I do not know whether this detail means anything or not, but it helps to show what some of the problems were at that time, and I think I would like to get that in the record in view, particularly, of the testimony that I heard here yesterday—the engine requirements at the moment, according to our concept, at least, involved an engine that had to be built brandnew or designed brandnew from the bottom up, and the Winton Engine Co. at that time, owing to the receivership of the automobile company, and Mr. Winton's assets and all the rest of them having been involved in that matter, the Winton Engine Co. was in the hands of the bank, and they were in no position to introduce or to spend any money for a new experiment of any kind of the character that we were talking about, particularly when so far as we, so far as I was concerned, and the Electro-Motive Engineering Co., which was the name of the company then, the automobile company—that is, the engine company, the management of it and the bank did not feel that this proposition offered enough future and was secure enough, was a secure enough future for them to venture the capital involved to develop a new engine.

So Mr. Codrington suggested we go talk to Mr. Winton personally, which we did. He came to the office; he was getting to be an old man. He came to the office occasionally but we went out to his residence, sat down and had a long talk and, of course, even in his last years, he had the spirit of the pioneer; his eyes would light up when we were talking about what we were going to do, which was something new and novel and off into the future. It was a forward development.

So, after Mr. Codrington told him what we wanted, and after I described what we hoped to do and the potential possibilities that I thought existed, without any other word he simply got up, put his hand on Mr. Codrington's shoulder, and said, "Go ahead and build it, George, and send me the bill."

Well that, of course, gave us a green light to move ahead, which we did.

Mr. BURNS. Would you spell Mr. Codrington's name for the record?

Mr. HAMILTON. C-o-d-r-i-n-g-t-o-n.

Well, after Winton completed the engine, which they did, in the meantime General Electric had built us our electric equipment, and we put the two together, and they functioned.

In the meantime we had established some relationship with car builders to build the structure we wanted, more or less to our designs; so we introduced and put into service in 1924 two cars, both alike. They went into service in 1924, gas electric, as they were called at that time.

They had 175-horsepower engines. One went into service on the Chicago & Great Western; the other one on the Northern Pacific.

They were sold—the order was taken, if we want to call it an order, by me on this basis—I am introducing this into the record to show a state of mind that existed at that time.

I will digress for a moment to get back to this state of mind, as I call it.

The McKeen effort, the General Electric effort, the efforts of the large motor-vehicle manufacturers during this period, which included nearly all of the big names in the industry at that time, had offered and had sold and delivered to the railroads their version of some form of a rail car, and in 1 or 2 cases there had been separate companies formed to take this same philosophy of design and expand it into bigger vehicles.

Yet, following automotive practice, all of them—apparently, at least, and to the mind of the railroad people—had been more or less failures.

So, by the time we introduced the gas electric car of our design in 1924, there was a sour state of mind in the mind of the railroad people.

Senator O'MAHONEY. These were all gas electrics?

Mr. HAMILTON. Which is that, sir?

Senator O'MAHONEY. The three that you have indicated, the McKeen engine, the General Electric—

Mr. HAMILTON. No. McKeen was mechanical; General Electric was electric only.

Senator O'MAHONEY. Electric only?

Mr. HAMILTON. Yes, sir.

Senator O'MAHONEY. And then the others?

Mr. HAMILTON. Were all mechanical.

Senator O'MAHONEY. All mechanical?

Mr. HAMILTON. Yes, sir.

Senator O'MAHONEY. So now we come to the first gas——

Mr. HAMILTON. Gas electric.

We come to our gas electric, which was really a modern version of what General Electric had done before, several years ago.

You see, we have got to keep in mind now that the design of the General Electric car and the engine and all the components represented engineering and technical knowledge of the art in 1908.

Senator O'MAHONEY. What I wanted to be clear about was whether the engine which Mr. Winton agreed to finance, the construction or experimentation of which he agreed to finance, was a gas electric or a diesel?

Mr. HAMILTON. No, a gas electric.

Senator O'MAHONEY. That was a gas electric?

Mr. HAMILTON. Yes, sir.

The first car—and I am still talking about those now—met this state of mind or atmosphere that existed in the country, and it was quite hostile.

So before we had completed these cars, when I went out to see if we could sell them, I had to make this sort of guaranty to get the first order, and the guaranty was this: First, we gave them charts showing how fast the car would run under all operating conditions on different grades; how fast it would accelerate from zero miles per hour up to its maximum speed; how fast it accelerated hauling a 35-ton standard railroad coach behind it under all of these conditions; and these curves were to be guaranteed. That was part of the condition of the deal.

In other words, we would set up a test piece of track, stake it out, run it, a typical engineering test, to prove all of this performance, as we called it, that we had guaranteed.

Senator O'MAHONEY. You were to make the test before the sale?

Mr. HAMILTON. No. It was this way, Senator: They had given me an order that if the motorcar would meet all the conditions they would pay for it, but if it did not, it belonged to me.

Senator O'MAHONEY. So you undertook to build a motor that did meet these conditions?

Mr. HAMILTON. I beg your pardon?

Senator O'MAHONEY. Then you undertook to build a motor that would meet those conditions?

Mr. HAMILTON. Yes, sir.

Senator O'MAHONEY. Confident that you could do it, and confident, therefore, that you would get your money?

Mr. HAMILTON. That is right.

There was one other requirement in this contract that was more difficult by far than the performance requirements, because those were all subject to engineering calculations, and we could do it if we were as good designers as we thought we were; then the motorcar was bound to meet those conditions.

But there was another factor over which we had no control. It was in the laps of the gods, and that was this: That the motorcar was to operate on a schedule run for 30 days, and not to be late at the final terminal over 15 minutes, two times. If it did, the guaranty was—the motorcar belonged to me, and the railroad's obligation had been met, so to speak, or they had no obligation.

That meant, in order to establish these two motorcars, and the reason that was so tough was because everything that had been done in that field up to that time had left such an odor behind that no railroad was going to take an obligation to buy anything in the form of one of these gadgets or whatever you wanted to call it—they had all kinds of names for them, incidentally—unless they were sure that it was going to function, and it did not have the weaknesses that had prevailed before that.

That is why they made these guaranties so tough.

So here we were. We were a small company with limited funds, and we had these 2 cars built, and our success hinged on whether or not they met the guaranties, whether they would run for 30 days.

Now, you keep in mind that a broken spark plug, a little dirt in the fuel line or a drop in brake hanger or an airbrake failure or a million things could happen to that mechanism of that kind that would cause a delay on line, so that you would be 15 minutes late at the final terminal.

We had some fast experiences, I assure you, during that period of time. I will not go into detail on that.

Senator O'MAHONEY. What did it cost to build these engines?

Mr. HAMILTON. The engine itself?

Senator KEFAUVER. The whole thing.

Mr. HAMILTON. Or the entire motorcar, Senator? The whole car?

Senator O'MAHONEY. I meant the whole car that you were selling.

Mr. HAMILTON. The car we were selling at that time, I think as I recall it now, sold for about \$48,000, the entire vehicle; that was the selling price of the vehicle.

I am going on memory, because we eventually made them a little larger, and we got up to \$55,000. I think that was \$48,000, to begin with.

Well, we put these two motorcars on their runs, and with some very fast plays that we had to employ during the period because of failures that did occur, things that did happen, but nevertheless they completed their 30-day test to the satisfaction of the railroad.

First we ran the tests against the curves or the performance data that we had guaranteed, and they met those. Then we put them in service, and at the end of the 30 days we had met the requirements there. So, of course, we got our money and, likewise, an order for more motorcars.

The reason I am going into some detail on that one was this, that at that time the railroads were still buying a few of the so-called mechanical drive vehicles built by the different bus companies and others that were specializing in this business at that time.

Almost immediately that buying ceased, and the entire interest in that type of vehicle was switched over to the gas electric, and our business expanded just like an inverted pyramid from that point on, that is, during the balance of the twenties.

Eventually, we had competition. Other people came into the field to build a similar car, so we were not alone.

By the end of the thirties, why, I think there had been three people in the business.

Mr. BURNS. Mr. Hamilton, at the time that you satisfied the requirements of these railroads in 1924, was your car the only gas-electric

type vehicle operating on the railroads, as far as you know, in the United States?

Mr. HAMILTON. Yes, sir; except the remnants of the old General Electric cars. There were still a few of those operating, but that was the only car that was being offered for sale at that time, being manufactured in this country.

Mr. BURNS. All the others that were being offered for sale were with mechanical transmissions?

Mr. HAMILTON. That is right.

Mr. BURNS. Were you the person who was chiefly responsible at that time for the conversion of the thinking of the railroad people to accepting this gas-electric type of vehicle?

Mr. HAMILTON. Well, this vehicle that I have just described, and those that followed immediately, established their own reputation. They hewed their own way, because they were reliable. They did what the railroads wanted done, and always said they wanted in a vehicle of this kind.

They were economical; they would cover their run successfully, and they operated for around 30 or 40 cents a mile as against a dollar or a dollar and a quarter for the steam train they replaced, and they could run them two or three, four hundred miles a day if the run was available, so that the economy was tremendous, and their interest developed fast, and the motorcar established its own reputation, and that is what carried the thing along.

Mr. BURNS. And that was based on the successful transmission into a practical rail car of the ideas which you had developed in forming this company?

Mr. HAMILTON. Yes, sir; except I would like to add this point right there: There is a whole lot more to a motorcar and a whole lot more to a diesel locomotive than simply the transmission.

The entire motive-power mechanism that goes into these vehicles must be a coordinated whole. They must be designed so that they function together as a compatible mechanism, and that involves a lot of apparatus in addition to simply the electric transmission.

Now, to be more specific, I am convinced and others are, too, now that the internal-combustion engine—should I explain what I mean by an internal-combustion engine, Senator?

Senator O'MAHONEY. We hope a lot of people will read these hearings, so I think you might do that.

Mr. HAMILTON. We use the term in the engineering world to differentiate between a steam engine and what we commonly know as a gasoline engine or a diesel engine. So we call it an internal-combustion engine, and the general characteristics there are no different between a gasoline engine, a gas engine, and a diesel engine in that respect, because the combustion is all internal, it is all inside the cylinder, and that is how the name was generated.

So the characteristics, the horsepower output, and the ability to do work of an internal-combustion engine are such that it is completely backward for the application into a mobile power, without the introduction of a very flexible scheme of transmission.

You can do it well in an automobile, because you have got a light vehicle, and you can maintain, get some momentum, and then you can shift gears, and the car keeps rolling while you are shifting gears, and

you are in the next one, and you drop your clutch in, and so on and so on and so on.

But if that automobile weighed on the order of 20 tons instead of 4,000 pounds, and you tried to shift gears and make it go someplace with this little engine, then you would discover what the problems are in converting the power of an internal-combustion engine down to the drivers.

So it was our contention then, and it was our subsequent experience, which has proven that, without an electric transmission introduced between the engine or the prime mover, in this case the internal-combustion engine, either gasoline or diesel, the final result is unsatisfactory, and so, answering your question, I would say yes, the electric transmission is definitely necessary, but I want to establish the fact that that was not the whole story.

If the rest of the mechanism in that motorcar had not also been correctly designed and compatible so that they worked and lived together, a balanced design, then the motorcar would not have been a success, regardless of the transmission. It required a whole piece, everything to be the same.

Mr. BURNS. Can you describe briefly the developments from that time until 1930, so that we can see what the situation was at the time that General Motors acquired your company and the Winton Co.?

Senator KEFAUVER. Mr. Chairman, may I ask a question for my own interest?

Is much energy lost in the transmission of power from an internal combustion engine through an electric generator and then through the drive shaft, or is there much loss of energy in that process?

Mr. HAMILTON. That is right. There is a loss of energy. The loss of energy on the generator, depending on who builds the generator—of course, there is a slight variation—but the generator efficiency, as a whole, runs in the order of 93 to 95 percent.

Senator KEFAUVER. So there is a 7 or 5 percent loss of energy?

Mr. HAMILTON. At that point.

Then you have the traction motor, and the efficiency of the traction motor varies in proportion to the output but, normally speaking, they are on the order of 85, 86 percent efficiency, so you add that differential in there.

So when we talk about transmission efficiency and transmission as used in these diesel electric locomotives which we are to get, I have to make one more qualification there, but what we are dealing with is a complete conversion of energy. You start out with mechanical power in the engine, which is converted into electricity in the generator, the dynamo, as the public knows it, and then we reconvert that electrical energy back into mechanical power by the traction motor in order to rotate the drivers, so technically we call that complete conversion of energy.

The reason I make that differentiation is that there have been transmissions built in which there is no conversion; there is simply the armature and the field coils so controlled as to make a slipping clutch sort of arrangement that has always been called an electric transmission, but it is really a magnetic clutch, but there is a difference.

When we get to the type we are talking about here, the efficiency values that we deal with are in the order of overall 85 to 86 percent.

Senator KEFAUVER. Thank you. Excuse me.

Mr. BURNS. Now, will you tell us about the development from 1924 to 1930.

Mr. HAMILTON. Well, the development during that period of time, so far as we were concerned, we were dealing all the time with refinements, improvements, and taking care of weaknesses that we discovered as we went along and had experience.

But the interesting phase of it that you have in mind or the important phase of it, is what happened in that period of time from the historical side. Well, it was this:

The railroads, as soon as they got a few of these motor cars, did the typical thing. They started hauling behind them first a little light-weight coach, 35-ton coach, and we had only guaranteed to haul a 35-ton coach, and pretty quickly they found that the 35-ton coach was old, and people did not like it, so they had to put on a better coach to satisfy the community, and that better coach was a modern steel car that weighed about 60 tons. So that interfered with the performance. So the demand immediately arose for more power. We provided the horsepower. We stepped up the horsepower.

The next thing the railroad sees is that they have only 2 motor-cars, and they want to reach into the next bracket to get where they can handle 3 cars, so that means still more horsepower, and we have got to step it up, so we went through that process to step up the horsepower to handle bigger trains, if you will, more cars, until about 1930 when we had reached 800 horsepower, after starting with 175, we were up to 800 horsepower. We got the 800 horsepower by multiplication.

The largest engine we had built and put into service at that time was 400 horsepower for engines, so we multiplied that, we put two of them in the cab, and we came up with 800 horsepower, and that was about the ceiling, and that is where we were in 1930.

Mr. BURNS. Were there any other companies in 1930 manufacturing the same size and type of gas-electric car that you were making?

Mr. HAMILTON. Yes. There were people manufacturing the same type. Their sizes of horsepower, and so forth, did not necessarily parallel ours, but in a smaller size, yes, there was one that was made with 300 horsepower, and there was another one of 500 horsepower.

Mr. BURNS. Can you give us the names of those companies?

Mr. HAMILTON. Well, the 300 horsepower was the Brill Co.

Mr. BURNS. ACF Brill?

Mr. HAMILTON. ACF took over the Brill Co. later, but at that time was an independent company, as I remember it, or the consolidation occurred in that period.

The other one was the Westinghouse Electric Co. which was a diesel engine, incidentally, not a gasoline; those two.

There was one other, I think the Mack Truck Co. went in and made a little start in that direction, but they never introduced, built enough, to have any importance.

The two competitors of consequence were the Brill Co. and the Westinghouse Electric.

Mr. BURNS. What did your company actually make in the cars that were sold? That is, we would like to have an explanation of just what part your company played in the actual manufacture, and also was it your company that sold the complete vehicle to the railroads?

Mr. HAMILTON. Yes.

The arrangement was this: We did not ourselves, Electro-Motive Co. which, incidentally, the name had been changed in that interval—when we started out—I might digress for a moment so as to clear the record—the company initially was the Electro-Motive Engineering Co., and after a couple of years we found ourselves getting so many inquiries in the mail involving all sorts of engineering problems and inquiring would we undertake this and would we take some other engineering, inasmuch as we were specializing only in this one thing, we decided we might just as well get rid of that name “Engineering,” because we were doing business only with the railroads; they know what we were and who we were, and we did not need the name, so we became the Electro-Motive Co. along about 1925, in that neighborhood.

Now, getting on up to the point as to our—I kind of lost my point there now.

Mr. BURNS. What parts you were selling.

Mr. HAMILTON. What our parts were?

Mr. BURNS. What parts did you manufacture?

Mr. HAMILTON. The Electro-Motive Co. did not manufacture anything. We had no manufacturing facilities. We had a very close working arrangement with the Winton Engine Co., and we initially had established a very close working arrangement with one of the car builders of St. Louis, later on—and the electrical equipment was supplied by General Electric or Westinghouse as time went on; they came into the picture and supplied some for us, too; and then the other components of varying pieces of apparatus that are necessary, we procured from the original manufacturers.

Then the cars were all built to our specifications at these different car plants. We collected all of the equipment at those plants, and with a crew of supervisors, not hourly people, but supervisors on our payroll, the equipment was all installed in these cars, whether it was at the Pullman plant, St. Louis plant, Standard Steel, broadly all over the eastern part of the country, wherever these plants were, the cars were built.

Now then, we took full responsibility. We sold the motorcar, worked out general and operating studies, and economic studies of where the motorcar would be applicable from an economic standpoint. We sold the motorcar.

We took full and absolute responsibility for its performance and all of the after-sale guaranty for the railroad, the car builder, the engine builder, the electric people; nobody was involved but us. We handled all of that.

We also set up, to support the motorcars in service, parts depots, as we called them, all over the United States. I say all over. They were strategically located so that at no time was one of these cars over 24 hours away from a spare part. If any one of them failed, we could get a new piece to it in 24 hours any place, whether it was in Spokane, Wash., Portland, Maine, or Miami, Fla. In other words, we had them so located we could do that.

Mr. BURNS. Those depots were owned by your company?

Mr. HAMILTON. They were owned by us.

Mr. BURNS. And you serviced from them?

Mr. HAMILTON. That's right, but other than that as a sales service and guaranty engineering development company, that was the nature of the Electro-Motive Co. in those days.

Mr. BURNS. The other companies that sold vehicles that were supposed to serve the same purpose, did they try to, or did they make the identical type of car that you were making by 1930?

Mr. HAMILTON. Very close to it; very close to it.

Mr. BURNS. There was nothing to stop them from doing it?

Mr. HAMILTON. No. On the other hand they had a lot of help because the electric transmission, which by that time had been developed by a lot of blood and tears and perspiration on the part of General Electric and ourselves, working out the bugs and taking the losses that it involved, was available to them right on the shelf. All they had to do was call up General Electric and have it shipped to them.

General Electric was selling it to anybody that would come and pay for it. They were in no position to make an exclusive arrangement with us, in spite of the fact we had, more or less in conjunction with their people and engineers, evolved this.

Mr. BURNS. Now what was the nature of this diesel electric which Westinghouse was making at that time?

Mr. HAMILTON. That is a quite a tale. I am afraid you would be bored to tears before I got through with that. I don't know how I can shorten that one up either.

Senator O'MAHONEY. I can assure you that to date you have been boring the chairman not at all. It has been very interesting, sir.

Mr. HAMILTON. Thank you, Senator. Well, maybe if I can tell that story so as not to confuse everybody and boil it down to where it makes some sense, I will attempt to do it. I will try to make it as short as I can.

Mr. BURNS. Will that help to explain the differences between what your future developments in diesel were?

Mr. HAMILTON. Yes, it will have a place in what is going to be said later on as to what the problem was.

Mr. BURNS. Would you rather refer to that when you are discussing your own development of diesels?

Mr. HAMILTON. I think so. We will just leave that one on the shelf and come back to it, if it suits the Senator.

Mr. BURNS. All right, tell us the situation in 1930 at the time that your company was taken over by General Motors. At that time were you getting your engines entirely from Winton?

Mr. HAMILTON. Yes.

Mr. BURNS. And you were getting the electrical equipment from General Electric?

Mr. HAMILTON. And Westinghouse too, by that time.

Mr. BURNS. All right, now, what was the business situation and the technological situation at the end of 1930?

Mr. HAMILTON. Well, the problem was primarily one of economics at that stage. The railroads, as I said to you and as I indicated a while ago, had stepped up their horsepower requirements to where we were thinking—everything we were building at the later period was 800 horsepower.

Now, in the meantime, when we launched this program back in the middle twenties, the price of gasoline in bulk bought in tank cars, which is the way a railroad buys it, was in the order of 4 cents a gallon.

That varied some places, it was 5 some places, and $3\frac{1}{2}$; in Texas you could get it for $3\frac{1}{2}$ cents a gallon.

By 1930, however, it was in the order of 14 cents a gallon, 12 to 14 across the board, so that our economic advantage from the cost of fuel standpoint was running backward on us, so to speak.

Now, then, by increasing the horsepower requirements up to 800 as against the smaller horsepower, then our fuel cost, because of the size of the engine on the one side and the price of the fuel on the other, brought the operating cost of that sort of a vehicle, 800 horsepower as against steam, steam engine, it narrowed the gap down to a point where the economic advantage of buying these motorcars commenced to disappear.

Then there was another factor that was involved, and that was that, during the twenties, we had the greatest hard surfacing campaign for rebuilding highways in America that took place, as we all know. By that time buses and highway motor vehicle traffic had further cut into the passenger travel on these branch lines that the railroads had to operate, secondary main lines and so forth, so that before they would buy a vehicle to supplant the steam engine on some of these runs, in many cases the run had an income or the train had a revenue of maybe 30 cents a mile and it costs them \$1.50 a mile to run it. So they would go to the State commissions and ask for relief, try and get many of those trains removed, the privilege of taking them off. That was a step that had to be done under the law, and that is what they did.

So they had all of these, or many of these, requests before the commissions in all the States all the time. And as they finally got approval, they would fluff off certain runs, and those that they could not get approval on, then they would buy motorcars to try and reduce their losses.

Now then, those two factors operating together had resulted in a ceiling on our business. We had come to the end of the road because the amount of buying of motorcars under that combination of circumstances had shrunk down to where we had really saturated the market.

That combination of circumstances had saturated our market. How much further do you want me to go on that, Mr. Burns?

Mr. BURNS. In 1930, the end of 1930, the stock of your company was sold to General Motors. What were the events leading up to that transaction?

Mr. HAMILTON. Well, the steps are a little involved there because, to some extent, they include the Winton Engine Co.

Mr. BURNS. Will you go back and tell the steps leading up to it?

Mr. HAMILTON. Chronologically it might be better for me to cover this phase of it a little more and then bring that other into the story so that it doesn't get too confusing.

Mr. BURNS. All right, proceed.

Mr. HAMILTON. This problem that I have just indicated that faced Electro-Motive at that time was not taken easily nor lying down so far as the Winton Engine Co. or ourselves were concerned.

One of the efforts that we made was to try and learn or use as a fuel in these engines so-called engine distillate, which was a by-

product, or was at that time a by-product of the Burton cracking process, and it has characteristics that are so different from gasoline that the trick of burning it in an engine of this kind, gasoline type of engine with carburetors and spark plugs, and was very difficult.

But we made an effort in that direction, spent a lot of time and the fuel at that time was available on the order of 3 cents a gallon. In fact, down in Texas you could get it for hauling it away from the refinery because it was a byproduct of no value.

So we attempted to devolve carburetors and other devices and gadgets to see if we could burn this low-grade fuel.

We could, on certain operations where a motorcar was in a relatively constant load where they started up a grade and stayed with full horsepower and didn't shut off at the top and start and stop, it did very well, but when it go into an intermittent operation, we had a lot of trouble. I think that right at that point I had better bring the diesel into the picture.

Now with the exceptions of these engines that I am talking about, the Winton Engine Co.'s business at that time, as it had always been, was purely builders of diesel engines, and they were right in the middle of that, and as probably as far advanced in diesel engine design of that period as any of the American builders.

Naturally we discussed among ourselves over and over and over again as to how we could make a diesel do this job, recognizing that with the increase in the price of fuel and the increase in horsepower, we had to find some way of taking advantage, if possible, of the high thermal efficiency of the diesel engine versus the gasoline engine.

I might state right here that at that time both of them operating under optimum conditions, the difference between the efficiency of one was about in the order of 18 percent in the gasoline engine and 36 to 37 percent efficiency in the diesel. I don't mean to say that that is what the efficiency is out at the rim of the wheels, I am talking about the engine per se.

Now another characteristic is this: that was vital, and I might add this, because it is going to come into the story somewhere along here, if I have a chance to cover the whole thing completely.

The diesel engine thermal efficiency characteristic or habit, if you will, is this: its efficiency curve or thermal efficiency curve is, so to speak, flat. In other words, idling with a very light load, not putting out any horsepower, it has the same thermal efficiency as it has at full horsepower. Now when we go to the autocycle or gasoline engine, as it is commonly known, which is the engine with the carburetor, spark plugs, and so forth and so on, the efficiency curve is what we call in the engineering world a drooping curve, that is to say that when the engine is idling, like when you are standing in your automobile waiting for a red light, the engine is at most inefficient point on its efficiency curve. It is at the bottom.

And as you speed the engine up to horsepower and finally get clear up to its maximum power, it has its maximum economy, in other words, its maximum thermal efficiency.

Now in locomotives as well as in your automobile, there is the load factor, as we call it, involved. In other words, if you could run an engine full horsepower all the time for a given period or increment of time of 1 hour or whatever you want to call it, you would have a 100-percent load factor. You don't do that in your automobile or on

the streets, and so forth. Your load factor of the engine is in the order of 15 percent.

Now then, out on the railroad in these locomotives and in operation our load factors varied. We had discovered that the load factor in switching operation, that is, the locomotive built for switching cars, was in the order of from 15 to 30 percent. It varied depending on the assignment. When we got into passenger operation, it could vary some, but would normally be in the order of 60 percent. When we get into freight service, we can get it up into the 80-percent load factor.

Now, then, the gasoline engine operating on a relatively light load factor was a very inefficient animal because we were not working at the optimum efficient point, we were working way down the line. But the diesel engine, due to its inherent characteristics, when we put that in in place of the gasoline engine, we had a curve that was perfectly flat.

The engine is just as economical, thermally speaking, when it is idling or running at a 10-percent load or a 20-percent load as it is at a 100-percent load. So for the problem that we had to deal with here, which was purely an economic problem at all stages, purely an economic tool that we were dealing with, then we had to deal with something that had a fundamental optimum economic characteristic, and that was the diesel engine.

So naturally we struggled along to see if we could not produce among ourselves at Winton a diesel engine that was suitable for this job.

Mr. BURNS. Was that development of a diesel commenced before 1930 at Winton?

Mr. HAMILTON. Oh, yes. Winton at that time—I am still talking about the late twenties, 1928 and 1929—we commenced to recognize this problem, that we had one ahead of us, and we had to do something about it, and we started on the distillate experiments as a side issue, but it was there all the time as a problem.

Now the whole industry, the diesel industry in this country and in Europe, was working on this problem of doing this: reducing the horsepower weight ratio that had prevailed in the diesel engine development the world over at that time.

Those that had accomplished the most, some in this country, some in Europe, had finally got down to where they were willing to talk about and sell you an engine and guarantee it to have a reasonable commercial life that weighed in the order of 60 pounds to the horsepower.

Mr. BURNS. Was that a stationary engine or one that was on wheels.

Mr. HAMILTON. They seldom sold them for stationary. They were sold generally for boats in those times. That was primarily marine practice. There was no mobile power at that time I am talking about, with moderate exceptions.

There are some, and the story was given here yesterday, that is, as to the development of that character. But in principle, I am talking about the status of the diesel engine art at that time in this country and Europe.

Now it is true the Germans had built lighter weight diesels than that, had developed them for their submarines and our own people had them in this country and our own Navy had them.

And getting back to the point which we left on the shelf a while ago about Westinghouse coming into the picture in the late twenties, the Royal Automobile Society in England had taken a position that the English Government should support the development of a diesel-type or engine or a diesel cycle engine for lighter-than-air craft, and their experience with the Zeppelin bombing in England, which was only a scare, but they had it and they had not gotten over it yet after the First World War, so the Beardsmore people in England were commissioned by the Royal Society to develop a lightweight engine primarily intended for lighter-than-air craft..

Senator O'MAHONEY. Commissioned by the Royal Society?

Mr. HAMILTON. Yes.

Senator O'MAHONEY. With Government support?

Mr. HAMILTON. That is right. Now then, they made tremendous progress in building a diesel engine of relatively light weight. Now all the details of that I don't know, but it does not make too much difference, because the end result there that we are concerned with is this: That at one stage the Beardsmore people in their development felt they had a commercial product, and the Canadian National Railways in Canada decided to build some gas-electric cars and use an engine that Beardsmore would built following their development and experiment with this lightweight design.

Those engines were sent over to Canada by the Beardsmore people, and the cars were built in Canada, the electric equipment in this country, and sent up there, and the engines and the whole apparatus was installed by the Canadian National Railway in their own shop, and those cars were put in service.

Mr. BURNS. Was that gas electric or diesel electric?

Mr. HAMILTON. That is this Beardsmore diesel I am talking about. That engine weighed on the order, if my memory serves me, of about 15 pounds to the horsepower, instead of the 60 I was telling you about that prevailed the world over.

So shortly after that, after those cars went in service in Canada, the Westinghouse Electric Co. in this country made some sort of an arrangement with the Beardsmore people to build that engine in this country themselves, and they did.

They took on the manufacturing rights, or what have you, and they built the engine themselves, and sold quite a number in the form of a motorcar, 500 horsepower, and as I remember, the weight ratio of the engine was in the order of 15 pounds to the horsepower. They built quite a number of those, placed them in service on the different railroads in America at that time.

Now, they eventually quit that activity. Just exactly when they quit it, I can't recall right now. They quit it because it did not work out economically for some reason, and they decided to abandon the idea.

But that is the first introduction on any scale of consequence that I am familiar with of the diesel engine of the lightweight character in this country, so far as mobile power is concerned.

Mr. BURNS. Then in what period was that?

Mr. HAMILTON. That was 1927, 1928, 1930, in the late twenties.

Mr. BURNS. How did that compare to the weight ratio to horsepower of the gasoline engine which you were making and selling?

Mr. HAMILTON. Just about on that order, just about the same.

Mr. BURNS. Then they had solved one of the major problems as far as the use of a diesel engine on wheels is concerned?

Mr. HAMILTON. Yes, they had. There was one joker in it, though, apparently. The joker was this: That the engine was built by watchmakers apparently, and the minute something happened, the minute a piece failed and had to be replaced, you just about had to have that individual watchmaker on the job that built the first one the first time in order to get the engine back in shape.

That was the experience in Canada, and apparently, and this is an assumption on my part, but knowing the story, knowing the problem per se, apparently what happened was that when Westinghouse had to manufacture that engine, manufacture the pieces off of tools and with the standards of mechanical workmanship that we could normally employ in a factory, the engine was not a success.

For instance, I can recall in one circumstance being told by one of the officers of the Canadian National Railway that they had to send to England to get workmen to fit the pistons. They were not able to do it and they were lapped in by hand.

That means just the way a jeweler fits a bearing in a watch, the final operation is a lapping operation, and that is what they did, and it would take a man 2 days to put a new piston in 1 of these engines that failed, just to lap it in a little bit at a time, make a couple of movements, take it out, put it through a set of mikes, put it back in, put a little bit of emery dust on it, make 2 or 3 more movements, bring it out and go through that operation.

Now, it was an engine that required, it was so delicate, so highly designed that it required some sort of workmanship to function. When they tried to make it on tools it became an impossibility. It did not function. It was erratic, didn't stay together. Pieces would fail, so I am sure that is the reason why Westinghouse decided it was not a commercial proposition.

Mr. BURNS. But at that point, from the scientific standpoint, they had solved the problem?

Mr. HAMILTON. That's right.

Mr. BURNS. Of making—

Mr. HAMILTON. It could be done. But on the other hand, the Germans were making a 10-pound engine before that, but they were doing the same thing. It was so involved with so many auxiliary "gadgets" and such refined workmanship and design that to manufacture it at any reasonable price—the way to make things in America—it was an impossibility.

The Germans could do it with endless craftsmen of every character and a relatively low cost per hour, and men that had spent their lives at one individual job, why, they could build it, but we could not build it in this country that way.

So the Germans had a 10-pound engine even then, but that was about as nice a job that I know of that was done by anybody at that stage.

In this country to build an engine that would live on the railroads or in the kind of service that we are talking about, anybody's engine, I don't think there was any exception to that rule including Winton; the best you could do was in order of 60 pounds to the horsepower in 1928, 1929, and 1930.

And there was another factor in there, too, and that was the crankshaft speed. The fastest running engines in that period were in the neighborhood of 400 to 450 revolutions a minute. That was ideal for boats because you want a slow propeller operation, anyway, so there was no great problem there.

But when it came to our business where we were running a generator and the weight of a generator is in inverse proportion to its speed, revolutions, so to speak, in other words, if you run it 450 revolutions a minute it will weigh, we will say, a thousand pounds—that is not so, but then that is relative. And if you double up the speed to 800 revolutions then you can make a generator at 500 pounds that would have the same capacity.

So when we talk about a generator delivering a lot of horsepower, turning over at 450 revolutions, you are talking about a machine that weighs more and costs more than the whole engine itself. So that was not practical in our book.

It was in our estimate that we had to have speeds of 800 revolutions or more to make a successful electric transmission, in view of the weight factor involved.

So we decided at that time, Winton and ourselves, that we would take one of their engines and experiment with it. So we took a marine engine and tried it out and found that all the factors that we knew on paper were so. The next step was this: we took 1 of our 8-cylinder 400-horsepower gasoline engines and converted that into a diesel and rated the horsepower back to 300 as against this normal rating of 400, and we put that out in a switch engine and tested it for about 90 days or 6 months, I guess, altogether on a railroad in Cleveland, and found out a lot of things.

We found out two things were wrong. One is that the injection system, that is, the means of putting fuel into the engine, which is simply a pump with a lot of pipes and valves and so forth, operating with a camshaft that squirts a little oil in the cylinder at the right time when the engine is running, that is the means of supplying the fuel on diesel engines, that that mechanism was not as developed at that time in the history of the whole industry, and the mechanism we used was built by the Vickers people in England, who were the leading designers of the so-called diesel injection system at that period, that it would not do the job because it was erratic in operation.

We could not get them so tuned up so that you would get an even explosion throughout the engine at all times. One cylinder would have more fuel than the next. The result was we put a twisting and winding motion on the crankshaft and pretty soon the engine came apart. That was one trouble.

The other trouble is that the tubes and pipes and all the other things that carried this fuel under such high pressure, 6,000 or 7,000 pounds to the square inch, would not live. And at that time nobody knew how to make tubes and joints.

We did not have the metallurgy that we have today, so the result was we had leaky pipes and joints after we had the locomotive in service where you got a lot of vibration coupling in the boxcars, you get shaken up and so forth, and every time you would do that you would snap off one of these pipes that had 7,000 pounds of pressure in it. They were made out of material that would not take it.

So we decided at that stage that the answer was we had to develop an entirely new injection system, start at scratch, if we were going to make it.

Then after we got that done, we had to learn how to make the rest of the structure, and we had to reduce the weight if we were going to have a commercial engine, from about 60 pounds to the horsepower down to 20, which seemed a fantastic program.

Anybody that remembers the newspapers telling us all about it in those days of the problem of getting the weight of the internal-combustion engine down for airplane service, a long pull getting it down from 6 or 7 pounds to the horsepower to 2—eventually we got it down to a fraction of 1, but there were years involved there.

Now we are talking about the same problem, only we are talking about taking an engine that weighs 60 pounds and bringing it down to 20, and to double its speed and at the same time increase its life, its useful life of the parts. That was the problem that faced us in 1930.

Naturally we knew—we sent engineers to Europe to see what was going on over there and they brought back their stories.

And here and there you would find a little information, somebody had done something over there, and we put those things together to see what kind of a picture it made. We finally came to this conclusion, I did, anyway, that the development was clear out into the pure research field to get over the barriers. There was nothing known, nobody had done anything specific that you could combine together and accomplish the objective yet. We had to go clear and far afield.

We had to learn to build a structure for the engine that would take 2 and 3 times the stress that we were using at that time. We had to develop bearing materials that would carry bearing loading, in other words, pressure per square inch way out beyond what was being used successfully at that time even in the airplane world, for that matter.

We had to develop valves that would stand the higher temperature condition than we had before and pistons that would have to stand it because the engine had to be small, if it was going to be light, and if it was small that meant each cylinder had to do more work, the heat was going to be greater. So we had to work in the realm of temperature ranges in pistons that nobody had been working in before.

Well, on top of that, we had to evolve an injection system, new from the ground up. I came to the conclusion on my own—and I won't say that if Mr. Codrington was here today he would support me entirely, because his concept was a little different from mine, but this was mine—that where we stood at that time, it would cost in the order—and that was simply a figure taken out of the air, Mr. Senator, there was no place else to get it—about \$5 million in the engineering development to learn how to make the kind of an engine suitable for this job that we were talking about.

Now, if we learned how with \$5 million, then there would come the capital required to tool up to manufacture, because the experience of Beardsmore, or Westinghouse with the Beardsmore engine, the experience in Europe trying to build in any other shop except the original shop the little German diesel that was used in our submarines, taught us definitely and specifically that if you can't build something that is well enough designed initially, fundamentally that you can

manufacture from tools, jigs, and fixtures, then you had better not tackle it.

Now, it could be done. I will point out another story here. I am going far afield, Mr. Burns. I hope I am not getting this too involved, but I want to point out one thing to make my point on that right there.

The first exhibition of what can be done on tools that I am aware of definitely, by making things on tools that can be uniform and one piece fits where the other fits regardless of whether it was originally installed there or not, was after the war and the English Royal Society again ran this sort of an examination.

Among other things, there were a lot of tests at that time of products that were developed during the war, French vehicles of all kinds and English vehicles and ours, and so on, airplane engines, and all that.

Among the things they did then and that astounded them was this: we had in Europe a lot of staff cars, a lot of them at that time, and those staff cars were Cadillac 8-cylinder engines. I had nothing to do with General Motors in those days, so I am not ringing a bell for General Motors.

Mr. BURNS. This is after the First World War?

Mr. HAMILTON. This is after the First World War; 1919 I am talking about now.

Cadillac had introduced an 8-cylinder engine in 1915 in their automobile. That was their first jump from the old 4-cylinder engine. And at the time they built that engine, they had tooled up to manufacture, make all pieces alike and absolutely interchangeable to a maximum and minimum tolerance that nobody had ever thought of as being possible and practical in pieces that big.

Now, we do it in watches and we do it in adding machines, and we did it in typewriters and cash registers to some extent, but nothing in those things has any hard work to do, so it doesn't mean too much. Here we are talking about something that has got to work hard.

So the Automobile Society of England didn't feel that the stories they got about these machines being built on a production basis, all the pieces being built on a production basis, all the cars assembled out of one bin of pieces by a flock of mechanics at the other end of the plant, they didn't believe that story.

So what happened was they took 2 cars, tore down the engines completely and mixed up all the pieces, just scattered them around in a pile, and then they brought in a mechanic, turned him loose and asked him to assemble the 2 engines, which was done.

When they got the engines assembled, they took them over and put them on the test stand, each one of them went right up in horsepower to its norm.

Senator O'MAHONEY. The triumph of standardization.

Mr. HAMILTON. Exactly. Now, then, getting around to our problem here in 1930, we knew we had to design an engine that had the physical characteristics that I am telling you about. It had to have 800 turns, or better, in speed, it couldn't weigh over 20 pounds to the horsepower, and it had to have X life.

To do that, we had to manufacture it on tools. And I said \$5 million to design it, and maybe another \$5 million to build the tools and equipment to manufacture it. So it was a \$10 million project, as we saw it.

We didn't have \$10 million. In fact, I doubt whether there was \$10 million of venture capital in the whole diesel industry at that time, I am talking about venture capital, willing to take on a project so farfetched as that.

The proof of that is that Codrington of Winton Co. said: "You are shooting for the moon. If you do half that well, it will take us a few years. You can still run a locomotive with it."

We said, "No, that is only going halfway in, there is no use of doing this halfway. If you can't go all the way in, you had better not start." So that is where we stood.

Now, when 1930 came on, as we all know what happened to the businesses of the country that followed the stock market crash in the fall of 1929, Winton's business was pretty badly shot, our business was zero, and we were stymied with this problem of not having a product that the railroads were interested in buying.

They said, "We want bigger horsepower, we will take 1,500 horsepower, 2,000 horsepower, to haul all these trains and do all these things, if you come up with enough engine and it has economic possibilities," and there she sat.

So at that stage—and I am not familiar as to how this came about because I had nothing to do with it—at about that stage in time, the Winton Engine Co. was building some diesel engines for yachts for officers of the General Motors Corp. In fact, I think there were 4 of them involved at that time, 4 boats involved.

The result was a lot of contact back and forth between the management of the Winton Engine Co. and the General Motors people, because these were all topflight officers of the corporation that were buying these boats. Now, that went on for quite a period of time, and these engines finally got in process of manufacture.

Now, during that period Codrington told me one day, he said, "You know, you and I have talked a lot about how we are going to solve a lot of our problems." Now, during this period of trying to decide how we were going to solve our problems—and that meant getting capital into the business somewhere, somehow, and capital that would not completely control us and dominate us—we had examined all of the engine builders with the idea that we might consolidate 1 or 2 of them, or do some other thing and get a situation in motion where we could get the capital and go ahead with our engine development.

Senator O'MAHONEY. This is capital that wouldn't control?

Mr. HAMILTON. That's right; capital that wouldn't control, so that we could still manage the business and carry the project that we were shooting for, carry it on.

We decided that didn't exist among the diesel-engine builders at that time. We were quite familiar with the engineering ability and the mental attitude of nearly all of the major companies. We had relations with them, one way or another. So we were at our wits end.

We did not know at that stage what to do about it, until finally Codrington said to me, "There is a possibility that the General Motors people would be interested in buying the Winton Engine Co."

At that point he and I sat down and took a long look as to what would happen to us and what that might lead to if they did that, thinking entirely in terms of our development program, how we wanted to expand, and particularly as related to the railroad end,

because we were the largest customer they had, and it was quite important to Winton in the volume of business.

We took a long look at that one, and decided that, well, after all, General Motors has what we need. We need tremendous research facilities in the form of talent and laboratories, with all of the necessary instrumentation and all of the apparatus for testing, clear on out into pure research, if necessary. They had plenty of capital, they are in the habit of doing things of that kind. That is the way they had evolved their automobile.

So on the surface, it looked like the right kind of people to be tied up with. It depends, as I saw it and as I said then, on their attitude.

Now, you would be talking to them about heavy industry and something they are not accustomed to, when you talk about big engines and stuff on the railroad, and it won't be a volume business, they may turn you down. You may scare them when you tell them what sort of business this is. But if they go along, why, it will be a natural.

Well, that is what happened. They did go along. What Codrington said to them, who started the thing, whether it was General Motors or some individual in General Motors, or whether it started over banter or how it got going, I don't know. I don't know anything about that. I wasn't involved. I just heard the story.

The only point that I can contribute there that is definite and factual is that after General Motors had made a deal and they had bought the Winton Engine Co. and owned it, and they had made it a subsidiary. From that point on, of course, we were dealing then with a subsidiary of General Motors, that is, Winton Engine. Codrington and staff, and everybody, remained the same. There was no change in personnel.

I, of course, was delighted, because I thought, "All is right." In the meantime, I had got acquainted with Mr. Kettering. He had been back and forth. In fact, one of the boats being built involved his boat, and two of the engines built there were for his engine, for his boat, so I saw a lot of Mr. Kettering. I never knew him up until that time.

Mr. BURNS. Is this before or after GM bought Winton that you met Mr. Kettering?

Mr. HAMILTON. I think I met him before that, but if so, it was at a lunch or something, because I had no business with him, and I can't say that I talked to him specifically.

We may have had offhand conversations. But it became serious as soon as Winton was taken over, then he was there, and we had lots of long talks and I commenced to shape up and tell him then what our problem was in our business, just where we had become stymied and why.

Senator O'MAHONEY. You have told us about the negotiations which Mr. Codrington suggested—

Mr. HAMILTON. Which he suggested to me.

Senator O'MAHONEY. Yes; for the sale to General Motors?

Mr. HAMILTON. Yes.

Senator O'MAHONEY. That was the sale of Winton?

Mr. HAMILTON. That's right.

Senator O'MAHONEY. What about Electro-Motive?

Mr. HAMILTON. I am leading up to that, Mr. Senator. It follows right along there.

Senator O'MAHONEY. Off the record.

(Discussion off the record.)

Senator O'MAHONEY. Back on the record.

Since you have referred to Dr. Kettering, I want to say for the record that today I have received the best lecture on technology that I have heard since Dr. Kettering testified before the TNEC, of which I was the chairman. You have developed your facts in a very orderly manner.

You have shown how important it has become in the field of technology to turn from the lapping operation to the standardization operation, in order to produce the volume and the kind of machines that were required.

Now, perhaps to illustrate why this committee is in session, I want to say merely this: that the human question is whether it is necessary to standarize human beings as well as machines to obtain the sort of technological progress that we need and the sort of society, free society, which has been the aim and objective of all political thinkers in this country since the very beginning, and which is now the aim of our international policy with respect to international society.

It is the machine versus the man, the machine in the political field and international field being the Communist society or the Fascist society, the man being the individual human person who should be permitted, who should be free, if our ideals are to be carried out, to rise above the machine.

I am very pleased indeed, Mr. Hamilton, that you have been with us this morning, and I think our session this afternoon will also be productive of good results.

Mr. HAMILTON. Thank you, Senator.

Senator O'MAHONEY. The committee will stand in recess until 1:45.

(Whereupon, at 12 noon, the subcommittee recessed, to reconvene at 1:45 p. m. of the same day.)

AFTERNOON SESSION

Senator O'MAHONEY. Mr. Burns, are you ready to proceed?

Mr. BURNS. Yes, Senator.

Senator O'MAHONEY. You may proceed.

STATEMENT OF HAROLD L. HAMILTON, ACCOMPANIED BY HENRY M. HOGAN—Resumed

Mr. BURNS. Mr. Hamilton, do you recall at what point you were when we recessed? Do you want to commence from there?

Mr. HAMILTON. Yes. I think it is well to do that.

Mr. BURNS. Yes.

Mr. HAMILTON. We were at the point where General Motors Corp. had acquired the Winton Co., but no negotiations as yet had been started in connection with Electro-Motive Corp. being acquired.

Now, before I get into that point, there was a gap in the story there if it is not brought into the picture at this point, which will not be easy for me to explain just exactly why the final decisions were made by Electro-Motive people to join up with the Winton and the General Motors group.

Senator O'MAHONEY. May I suggest that it would be helpful now if you would tell us who the executives were in each group, in Winton and Electro-Motive at this time.

Mr. HOGAN. This is 1930.

Senator O'MAHONEY. Yes.

Mr. HOGAN. After the Winton acquisition.

Mr. HAMILTON. Well, my memory may be, so far as the Winton group is concerned, a little hazy.

Senator O'MAHONEY. Well, you can clarify that for the record afterward if you desire.

Mr. HAMILTON. Mr. Codrington was president of the Winton Co.; and a man by the name of Freiburger, I think, of the Cleveland Trust Co., was a director and also an officer, as I recall it, and a man by the name of McKinstry was secretary, but I cannot at this moment give you the names of the balance of the directors. I do not remember who they are.

Senator O'MAHONEY. It will be possible to find that out, of course.

Mr. HAMILTON. That information is available, but I just do not happen to recall.

Senator O'MAHONEY. Were they associated with any other similar enterprises?

Mr. HAMILTON. No. In fact, I am quite certain that most all of them, the people in the financial world, all the balance of the directors, and one of those, Freiburger, was the Cleveland Trust man—I think all the rest of them were financial people, if my memory serves me correctly.

Senator O'MAHONEY. Well, we can get that very easily

Mr. HAMILTON. But I would not make that positive.

Senator O'MAHONEY. With respect to Electro-Motive?

Mr. HAMILTON. In that case, I was president of the company, and we did not have a vice president at that time. He had died shortly before. A man by the name of Peddler was secretary and treasurer.

As directors we had a man by the name of Blythe, who was a member of the firm of Ernst & Ernst; a man by the name of Nelson who was an officer of the Union Trust Co.; a man by the name of Jeffers who was—I do not know whether he was an officer or not, but he was connected with the Aluminum Company of America. How many have I named? I do not remember now.

Senator O'MAHONEY. It is not necessary to tax your memory.

Mr. HAMILTON. That is about as far as I can go at the moment.

We had several deaths among our stockholders—that was at the end of the twenties—and those men had been directors; and when those men stepped out, we brought in bank people because of the estates.

Senator O'MAHONEY. How much stock was outstanding in Winton?

Mr. HAMILTON. I cannot tell you that; I do not know their financial structure.

Senator O'MAHONEY. How about Electro-Motive?

Mr. HAMILTON. Well, there was—meaning shares or in dollars, or how do you mean how much was outstanding?

Senator O'MAHONEY. Well, in shares and the par value of the shares.

Mr. HAMILTON. Well, there were about, as I recall it, 13,000 shares which had been issued at that time.

Senator O'MAHONEY. Who had control?

Mr. HAMILTON. I had the largest block of stock, and the control was in the hands of no one individual. There were several groups that controlled it, if they added theirs to mine, but there was no individual that had control.

Senator O'MAHONEY. What was the value of the stock at this time?

Mr. HAMILTON. In the order of \$100 a share.

Senator O'MAHONEY. Thank you, sir.

Mr. BURNS. Will you continue.

Mr. HAMILTON. We were talking about the period in the summer of 1930.

Now, in order to establish our state of mind and why we decided to go along with eventually joining up with General Motors: There was another development that had run along somewhat parallel to ours. It had started back in 1924 and 1925, I think, really, and that consisted of an arrangement or a working arrangement between three companies, one of them being one of the major locomotive builders, and they worked out a program and built a small, what they called, switching locomotive, and it had a diesel engine in it supplied by one of the group.

Mr. BURNS. Which companies were those?

Mr. HAMILTON. Those were the Ingersoll-Rand, General Electric Co., and the American Locomotive Co.

They built, first, a small switching engine, and it, in principle, other than the fact that it had a diesel engine, small diesel engine in horsepower, it followed the same general practice and had all the same characteristics of the motorcars that we, rail motorcars that we, were building.

In fact, the people who did the layout and the design were the same group of engineers in the General Electric Co. at Erie that had worked quite along with us, so all they were doing was just starting off on this same track.

Throughout the balance of the twenties, from that time on, 1925 until, we will say, 1930, that group of companies, together with 1 or 2 others—I cannot go into too much detail on that—including the Westinghouse Co., with their engineers, built a variety of diesel switchers and sold them for specialized purposes.

Now, apparently the initial application of those locomotives was largely in a specialized application. They were used where smoke ordinances had come into play, for instance, like in Chicago, being one case.

They were used where industry had a fire problem or where they had cars inside of a building, like the Merchandise Mart in Chicago; the railroads had them there because they could run under the building without steaming and smoking up the place and introducing a fire hazard.

Quite a number of them were used over the country in that general way.

The first engine was 300 horsepower, a rating of 300; the locomotive weighed 60 tons.

Now, following that, they eventually built engines up to as high as 600, as I recall it, horsepower, and built larger locomotives of similar character, and the locomotives weighed more, and so on.

There were quite a number of those in service by 1930 in different parts of America.

Now, I watched that development very carefully. I used to go and ride those locomotives occasionally when I was some place where some railroad had one that we knew it well, and we would ride it, and get the feel of its performance, because I had a feeling then that they were on the right track, and I was curious to know what the mechanical makeup of the jobs that they had done were, and so on.

Riding the locomotives and talking to the railroad people at that time, I learned what their complaints were, that is, why they seemed to be limited in their enthusiasm as to their possibilities of a successful commercial product and as a good piece of motor power on the railroad.

So I thought I knew what was wrong in the minds of railroad people. So we decided to see if we could not do something to find out whether our judgment was right.

Therefore we built a small—2 or 3, in fact—switch engines weighing in the same category, about 60, 65 tons, and we put a 400-horsepower gasoline engine in them, and they were sold to one of our eastern railroads, so we had a chance to see what happened when we had about the same kind of a locomotive as the other people were building at that time.

We did not consider ourselves competitive at all, but we had this locomotive with that type of an engine in it.

Mr. BURNS. This was before you were taken over by General Motors?

Mr. HAMILTON. This is along about 1927 I am talking about because it is a development which ran parallel.

Mr. BURNS. Yes.

Mr. HAMILTON. Then we also built, for one of the western railroads, a locomotive with 2 of our 400-horsepower engines in it, 800 horsepower, and they were used for the line operation, and freight service hauling up to 30, 40 cars. When they were not out on the main line or out on the branch line, they used them in the yard for switching purposes, so we had a chance to ride them and see what happened.

One of the things that the railroads apparently did not like about the diesel of that period was their sluggishness, their inability to do other than to push cars around.

They did not, apparently, have the acceleration or the pickup, as we call it in the automobile world, that they needed and required if the engine was going to be used in yard service and general switching, particularly where they break up cars and kick them down the track. They wanted something that has got some action to it.

So they would say to me, "Fine, but we can take one of these little six-wheel steam engines out here that does not weigh any more on the drivers than that locomotive and do twice the work in the same number of hours here in the yard as we can do with that?"

"If you want to push a lot of cars up the coal chute or where the adhesion is bad or the curves or grades are bad, then the diesel has got it, because they will lay down and pull all that is loose in the yard. But when it comes to fast movement they are out."

I thought I knew the reason for that, but I was not sure. But after we built these locomotives I am talking about, with the gasoline engine, we found out quickly that we were right.

What happened was that the diesel engine, due to the nature of the design at that time, big heavy pistons, big heavy rods, big heavy crankshaft, slow turning, big armature at the end of the crankshaft, the inertia forces of that rotating mass were so heavy that when you opened the throttle it took that engine a long time to get itself wound up to where it could deliver its power to the drivers. In the meantime, the engineer was disgusted with it because all he could do was shove cars really; he could not kick them. That was, in effect, what was wrong.

When we put the gasoline engine in there, we had an engine that had quick acceleration more like an automobile engine. You open the throttle, and it is up to speed right away, so you could kick cars up to the limit of the weight on the drivers; all that was controlling the acceleration was adhesion.

It would kick cars, and the 800 horsepower we had on the other railroads, it was a lively switch engine, very useful. So I had made up my mind there that Electro-Motive, including Winton, were not in a position to build an engine at that time, a diesel engine, any better than what these people were using. Ours was at the same point so far as technological characteristics are concerned. The rods were heavy, the pistons were heavy, and the shaft was heavy. The pistons were slow.

So we could not do any better than they were doing, and it was not in the book at that stage for us to go into the switch-engine business. That is what it added up to, because we did not have an engine. We could not do any better than they were doing, and the railroads would only buy them for specialized application.

Further proof of that point, I think, is this: Now I am dealing with memory, and I do not want to be pinned down as to absolute dates, but up to that time I think probably the largest order ever placed for a locomotive or what would be called a locomotive involving an internal combustion engine was by the New York Central Railroad, as I recall it, and it was the result of ordinances passed around New York excluding the use of steam locomotives in certain areas.

To meet those requirements, the railroad, in conjunction with several builders, being the New York Central, I think their historic relationship was American Locomotive, so I am sure it was the American Locomotive and GE, and one of the big battery companies—here is what they did: they built a locomotive in which was primarily a tremendous storage battery. All the other characteristics were the same.

It had trucks on it, it had a cab on the top, and the cab was loaded with immense storage batteries, and they put a diesel motor and generator to charge the batteries, so that the engine ran at constant speed, delivering horsepower all the time, building up the capacity in this battery, and inasmuch as the job to be done in these particular isolated spots around Manhattan, the Manhattan area, was one in which they needed a lot of horsepower when they were working, they did not work very long, but when they did work they wanted lots of horsepower, so this little engine was busy churning along, charging these batteries, and when they were ready to go to work they had lots of horsepower, they could kick cars and move cars, and do the job quickly and fast and sharp.

Now, there were 52 of those. That was, by far, as I recall it now, the biggest order, by far, up to that time placed.

But it proved the point I am telling you; I am telling you that tale to prove the point I am after here, and that is there was not anybody in this country apparently who knew how to build a diesel engine that would make a good switching locomotive at that time, and that included ourselves and Winton and all the rest of them. We could not have done any better than the boys that did the other job.

Now, that helps to establish the state of mind of Electro-Motive in the fall of 1930 when Mr. Codrington came to me and he said, "You know, while you think you are in a pretty nice position, you still have got a good source of supply for engines, and we are going to go places in the development of a new engine, I think it may be we might induce or General Motors might be interested in taking Electro-Motive into the picture, and we would all be in the same family."

Well, it is true enough that the economic conditions at the time were bad. We know we were in the thirties, and we were still on our way down. The future was an uncertain and unknown quantity.

Electro-Motive was in a very healthy position. We had built up a substantial reserve, but 2 or 3 or 4 years without any business would be quite a drain, and I was not sure the depression was going to end any faster, and on top of that the question was what have we got to sell. We did not have anything to sell. That is what it added up to.

In the meantime, I had been talking with Mr. Kettering, and he and I had many talks together with our feet up on the chair some place thrashing around the problems that went along in doing the job we were talking about, taking the weight out of the diesel and reducing the weight of the reciprocating parts and getting some snap to it, and furthermore getting some life into these parts, something that would live a while, and not have to put new bearings into it every 90 days, and all that kind of thing.

So I was receptive to what George, Mr. Codrington, was talking about.

I talked it over with our people. We went over all the phases of it, and we were a closed corporation—there was no stock on the market, it was just a few of us who owned it—so we finally agreed that we might go along.

Eventually Codrington came around and asked me, "How much do you want?"

So we talked that one over and decided what we wanted, and in due course a meeting was arranged in Detroit. I had a long talk with the vice president of the corporation who was handling the matter at that time, and we came to an agreement, and there was a stock exchange that took place.

Senator O'MAHONEY. What was Mr. Codrington's position at that time?

Mr. HAMILTON. He was president of the Winton Engine Co., and the Winton Engine Co. at this time was a wholly owned subsidiary of General Motors, its purchase having occurred in June, and the period I am talking about was later the same year.

So that we went into the group, as we called it, in the latter part of December of that same year, 1930, and became a part of it, and again a wholly owned subsidiary, with no relation to the Winton Co. at all, except the fact that all the stock was owned by General Motors in both cases.

Mr. BURNS. At the time that Winton became a subsidiary of General Motors, was it making any diesel engines at all for any purposes outside of those for the yachts, those special jobs?

Mr. HAMILTON. Well, their engine fit into quite a few applications, but nearly all of them were marine, tugs, and yachts and small fishing boats and things of that kind.

Mr. BURNS. So they were making diesels?

Mr. HAMILTON. Oh, yes. They had a long line of them. They probably were the biggest line, that is, in size, horsepower, and different characteristics, as big a line, if not the biggest, in America at that time, variety, I should say, to pick from.

Mr. BURNS. Were they then one of the largest engine-manufacturing companies in America at the time?

Mr. HAMILTON. Well, they were—I do not know—there were not any of them very big—but they were up where they were doing, I think the volume of business, was probably about equal with any of them.

I do not know any of them who were any larger, who had any larger volume than Winton. They were all about the same category.

Senator O'MAHONEY. Were diesels being used for anything beside these marine uses of which you have spoken?

Mr. HAMILTON. Oh, yes; oh, yes. The Winton Co. had more or less picked on the marine because they were always working toward a lighter engine with more crankshaft speed, and they were looking for applications for that type of an engine.

Now, most of the big diesel builders, engine builders, of that period built engines for stationary application, which were still larger and still heavier. Some of them went up into the three, four thousand horsepower range, but they were big engines, weighed 200, 225 pounds to the horsepower.

Senator O'MAHONEY. But they were not locomotives? They were not locomotive engines?

Mr. HAMILTON. Not at all. They fit big ships, big central power stations, and pumping stations, and where they set on a foundation or had a ship or something to ride in, where size and weight were not of such an important factor.

Senator O'MAHONEY. Have any of the names of the corporations engaged in the building of such engines as you have now described been mentioned in these hearings?

Mr. HAMILTON. Yes, one of them; McIntosh-Seymour.

They are now, I think—I do not know just what the arrangement is—but my understanding is that American Locomotive bought that company some years back; they own it. Whether they have dissolved it or what they have done with it, I do not know, but it was a very old-established engine.

They were steam-engine builders in the old days when they built steam engines, stationary engines, and then they went into the diesel, made big engines; one of the very fine old engine-building plants in America. They might probably be said—they probably built the finest Corliss steam engine that we ever had in this country.

Senator O'MAHONEY. Are those stationary still being built, diesel stationary?

Mr. HAMILTON. Oh, yes.

Senator O'MAHONEY. And not by General Motors?

Mr. HAMILTON. Not by General Motors, no.

We do not build for that, but there are many engine builders in the country that build big engines, and very effective engines.

I think our industry is far ahead of the Germans or any of the Europeans.

Senator O'MAHONEY. How many such companies are there; would you say?

Mr. HAMILTON. Oh, right now there are probably 5 or 6; there might be more than that.

Senator O'MAHONEY. They are not involved in the locomotive field at all?

Mr. HAMILTON. No.

Senator O'MAHONEY. Thank you.

Mr. BURNS. At the time, in 1930, what was the lowest weight-to-horsepower ratio diesel that Winton was making for any purpose?

Mr. HAMILTON. Well, that is a flexible thing, you see. If you build an engine, in other words, you build an engine, and an engine's life, a diesel engine or any other engine's life, is based on what we call mean effects of pressure; in other words, the amount of work it has to do.

If you have a job where the load factor is light, the amount of work is just a few peaks in it, then you can rate it higher in that application than you could if it had a constant heavy-duty job to do all the time.

But across the board, the average in Winton varied between 45 and 60 pounds to the horsepower.

Mr. BURNS. What weight ratio did they use in these diesels that were put into the submarines?

Mr. HAMILTON. Well, that is the next step, but the German engine, as I recall, it weighed in the order of about 15, 18 pounds to the horsepower.

Mr. BURNS. Were not any of those put in American submarines prior to 1930?

Mr. HAMILTON. It was my understanding that nearly all of them were; all of our submarines had them.

Mr. BURNS. Those that were made by American manufacturers?

Mr. HAMILTON. No, they were—I am not sure whether any American manufacturers made any of those engines or not, but they were of German design. I cannot be sure now. I would not take a position on that. They could be—it could be that some American manufacturers made some of those engines, based on German designs, but I cannot answer that one.

Mr. BURNS. Those were comparatively low-weight ratios?

Mr. HAMILTON. They were very low-weight ratios, very complicated, full of all kinds of gear and almost impossible to manufacture them, very delicate and full of headaches no end, because particularly of the piping and the outside design of them, with all the high pressures running around in pipes so that they were a headache in the Navy, and dangerous to the Navy.

That is the reason why some of the other things that will come out here later, may come out here later, got into this picture.

Mr. BURNS. You stated previously that you were, perhaps, the largest customer of Winton. Did that cease around 1930 when you had these problems of selling to railroads when the cost of gasoline went up? Did you lose that position for a temporary period?

Mr. HAMILTON. As being the largest customer?

Mr. BURNS. Yes.

Mr. HAMILTON. Well, I would say probably so. I think that 1929 was the end of the motorcar business really from any volume standpoint of any consequence, but it was likewise somewhat the dropping off point in the marine business, so far as Winton was concerned.

Now, we had some deliveries in 1930—I have forgotten what they were—and Winton had some business in the thirties. Now what happened percentagewise right there I do not know; I could not tell you.

Mr. BURNS. During the few months after Winton became part of General Motors, up to the time when Electro-Motive also became part of General Motors, were you purchasing any engines from Winton?

Mr. HAMILTON. Oh, I think there were a few; there were a few motor cars being built at that time; we were buying some, yes.

Mr. BURNS. But your commercial activity was slowed during that period?

Mr. HAMILTON. Very very slow.

Mr. BURNS. At that time was General Motors making any diesels of any type that you know of?

Mr. HAMILTON. No; they were not. General Motors at that time, based on my conversations with Kettering—he had been thinking seriously along the lines of the diesel cycle as per se, not an engine or its application, but the diesel cycle per se, and that is the subject of our conversations of great length, so they had been thinking about it, talking about it among themselves, and I think he had run some experimental phases on certain parts of the problem; but there had been no manufacture of diesels. They did not have any design even at that time.

Mr. BURNS. At the time that Electro-Motive became a subsidiary of General Motors, the extent of the development of a diesel locomotive was the extent to which your company and Winton had been endeavoring to develop a combination of the diesel engine with the electric transmission of this low-weight ratio?

Mr. HAMILTON. We were stymied right there. We did not know—we knew, and I said that before this morning, and I will repeat again—our experience proved that so far as rail motorcars, and we could project the problems right on out into any sizes that we wanted to consider, there were a few fundamental laws involved there, that the prime mover, in other words, the engine, had to be limited in the order of 20 to 22, 25 pounds to the horsepower, in that bracket, to produce what we would consider to be a commercial product, and it had to have a few other characteristics, including this quick acceleration if we were going to build a switch engine, successful switch engine, that the railroads would buy and would consider as being an economic tool.

The ones they were running, they did not consider an economic tool; they were just a convenience.

Mr. BURNS. Now, what your company sold to General Motors was its stock, and this became a subsidiary; is that right?

Mr. HAMILTON. It was a stock exchange.

Mr. BURNS. Yes.

Mr. HAMILTON. We took General Motors stock for our stock.

Mr. BURNS. I see.

What was the sales price upon which the exchange was based?

Mr. HAMILTON. Somewhere around \$95 a share, I think, for Electro-Motive, and about \$45 a share for General Motors at that time. That was the market price.

Mr. BURNS. Then you had about 13,000 shares at that time of Electro-Motive?

Mr. HAMILTON. Yes.

Mr. BURNS. Was there any understanding as to what further development would be sought by having your company and Winton together in the General Motors organization? Did you have a specific program which may have been the reason why you sold your stock or exchanged your stock and joined up with the General Motors organization?

Mr. HAMILTON. Well, we did not have it on paper. Everybody involved understood what the problem was at that time. That problem had been made perfectly clear, and I think if the facts were known I think the fact that there was such a problem of that kind existing right then, and at the time so intrigued Mr. Kettering, that he wanted to get right in the middle of that one, right now, and I presume that his influence on General Motors entered into their decision to put all these things together and really get at this job, because up to that point he had been thinking in terms of purely the scientific or technological problems and the technical problems, unknown problems engineering-wise to do to a diesel what had to have done with it.

That was the extent of his thinking. Here we come along and here is the problem. We are waiting, we are stymied. All we need now is an engine that will meet these specifications.

So the minute we fed him that it was just like ringing a bell to a fire horse; he wanted to get into that act quick, and, of course, that encouraged me, and there were further conversations, as I recall it, with the officer in General Motors that I carried on my negotiations, in which all the things were laid out on paper, and we made it clear that we did not have any business.

He knew that. The records were there, he could see what was happening. Winton did not have any business, but none of us thought the country was coming to an end. We felt there was a future for us.

We knew we had an economic potential that was just opening up like a rose once we could get over some of these hurdles, and the hurdles were challenges to General Motors research people, and they were anxious to take hold of it, and I am sure Mr. Kettering assured the General Motors people there was no question but what we could do it.

It might take some time and dollars, but we could do it if we could get over this hurdle; but that is where it sat.

Mr. BURNS. It appeared to you that Mr. Kettering was keenly interested in the scientific phases of developing and improving a diesel engine?

Mr. HAMILTON. No question about it. We spent hour after hour and night after night talking about it.

Mr. BURNS. And what you offered was this prospect of a specific application?

Mr. HAMILTON. That is right.

Mr. BURNS. And as you felt, a specific market in case you succeeded?

Mr. HAMILTON. That is right. That is what we offered.

And I recall very definitely the officer I was dealing with at General Motors, after talking about these details, he turned and said, "Now, here, you don't own anything; you have a quarter of a million dollars in spare parts and the rest of all cash. Just what are we doing buying this outfit?"

And I said to him, then, I said, "You are buying some know-how, the potential base from which, with what you can add here and what you can supply, tying it all together we can establish a new industry." He agreed with that, and he—he agreed with that.

Mr. BURNS. I gained the impression from what you said up to now that you had been the prime mover in this development, at least as far as you and Winton were concerned?

Mr. HAMILTON. Right.

Mr. BURNS. And you were bringing to General Motors all that background and thinking which you had gone through.

Now, were there any others in your organization who, besides yourself, contributed to that development or were they all just working under your structure?

Mr. HAMILTON. We had a staff of people. We had electrical engineers, a chief engineer, a man named Dillworth, and a book has been written about him. He was probably one of the leading engineers, particularly in this field, recognized in America. He was chief engineer of Electro-Motive. We had a substantial staff of people.

Mr. BURNS. You had a substantial staff, and they were not purely mechanical. They helped to work on the development?

Mr. HAMILTON. They were engineers; yes, sir; they were engineers.

Mr. BURNS. What sort of personnel did Winton have at that time who were, what you might call, development or research people, in that phase of it, rather than purely production?

Mr. HAMILTON. Well, they were limited in the research side.

Now, they had people, however, 2 engineers in particular at that time who were probably tops or right at the top level of diesel-engine designers in America, 2 of them; and they were right in the act.

One of them was assigned the forward development; one of them was taken out of ordinary production engineering and assigned to one phase of this development. That I have told you about this morning and that was the injection system.

We recognized we had to develop a new injection system, so we took one of the engineers and started him off on that program, and he was on Winton's payroll.

I agreed to take him on mine if Winton did not want to do it, but they were perfectly willing, and set him aside and gave him some space to work and some help and draftsmen, and he was working on the beginnings of the injection system which we now use.

Mr. BURNS. Was there any specific agreement that you and the Winton Co. would be permitted to continue this attempt to develop a type of diesel electric transmission for locomotives that you have been discussing?

Mr. HAMILTON. Well, there was no written agreement, but it was understood that is what the purpose of the whole thing was about; we certainly were not in any profit position as an enterprise, either one of us, at that time, to interest General Motors or anybody else.

It was only the potential there that interested General Motors, I am sure. I cannot speak for them, but so far as we were concerned, the whole conversation and the whole philosophy was tied up to that one point. It gave us an opportunity to go ahead.

I was satisfied with Mr. Kettering's interest in the matter at that time, because I did not know General Motors' organization then, how they operated, and who the people were, anything about them, except Mr. Kettering. But with his interest in the matter, why, I was convinced that he would carry the flag, and he did.

Senator O'MAHONEY. Well, as I get your story, Mr. Hamilton, it can be boiled down to this: That you and your associates, with the know-how, having conceived the idea of how the defects of the Electro-Motive transmission could be overcome with the diesel, having the staff which participated in this know-how, and under your leadership with the idea itself, you were lacking the manufacturing facilities and the capital to undertake the development of the potentialities you saw and, therefore, you turned to General Motors, after the head of Winton, which had already been taken over, suggested that that was the way to do it?

Mr. HAMILTON. Well, that is not exactly the situation, Senator, I do not believe. I think I ought to clarify that a little bit, with your permission.

Senator O'MAHONEY. Please do. All we want are the facts.

Mr. HAMILTON. If the problem had only been manufacturing something, just building it, making it, there would have been no problem.

We could have gotten money from our own bankers to do that. We could have financed our own plant if we needed it to do that. That was not the problem.

The problem was that the product that we knew how to make was inadequate, and to make a product which, in this case, was the engine, that would be adequate, was not considered in the cards at that time in the industry and, therefore, somebody had to supply the know-how and the energy and the capital to learn how to make the engine.

Once we learned how to design it, then problems took care of themselves. That was just ordinary manufacturing problems that could be met many ways.

So the barrier was really the fact that we had come to the end of the road. We no longer had an engine or a prime mover that would keep us in business, but we knew what would keep us in business, but we did not know how to design it.

Senator O'MAHONEY. That is what I meant when I spoke of the potentialities.

Mr. HAMILTON. Yes.

I do not mean we did not know how to make it. I want to put it this way: There is a difference between designing and making it. Making it, you put it in the plant and put some tools to work.

Senator O'MAHONEY. No. You had come to the end of the road so far as the old product was concerned.

Mr. HAMILTON. That is right.

Senator O'MAHONEY. But you saw potentialities.

Mr. HAMILTON. That is right.

Senator O'MAHONEY. And you were convinced that it could be successfully developed?

Mr. HAMILTON. That is right.

Senator O'MAHONEY. But you had no market for it; right?

Mr. HAMILTON. That is right. We had no market.

Senator O'MAHONEY. Because you had not built it yet.

Mr. HAMILTON. We had no market, but the market, of course, was there. We were satisfied it was there if we could offer the right product.

Senator O'MAHONEY. Yes; if you could build the product.

Mr. HAMILTON. That is right.

Senator O'MAHONEY. So your task was to find the organization that would produce the capital and the facilities to provide the necessary research and construction to build the new product?

Mr. HAMILTON. That is right; that is about what it adds up to.

Senator O'MAHONEY. And that you found in General Motors?

Mr. HAMILTON. Yes, sir.

Mr. BURNS. At that time there was a diesel switch engine in use, but, in your opinion, and as a result of discussions with locomotive people, it was not the type of engine which you felt would really be a success?

Mr. HAMILTON. Well, it was a success in a particular application that it had been employed in, but they were just a drop in the bucket. They were not taking the place of the great fleet of steam switching locomotives that the railroads used, and they were not being purchased as a matter of economic justification; they were being purchased because of some special operating condition that they fit better than the steam or where steam could not be used, like the electrified area on the Illinois Central around Chicago on the lake front.

That electrification had just been completed. They did not want to electrify all the little house tracks and tracks running under the freight sheds and so forth in that area, and so to put electric locomotives in there—and the law would not let them put steam engines—so these engines were used, and they did a very good job of it for that purpose.

Senator O'MAHONEY. Now, another question, if I may interrupt Mr. Burns:

At the time that this transfer was made, you sold your stock, that is, the whole 13,000 shares, for approximately \$95 a share to General Motors, receiving the consideration in General Motors stock. Were you, therefore, investing the capital stock of your enterprise in General Motors stock on the promise that General Motors, through Mr. Kettering's leadership, would undertake the development of the potential which you saw and which you revealed to him?

You were not actually investing the capital of Electro-Motive in the new enterprise. It might have been possible, might it not, if you had found the ear of some other person with sufficient appreciation of the potential growth of the particular industry, in a bank or elsewhere, to get the capital, the capital that would be necessary to develop the new engine with the know-how that you and your staff of engineers possessed? Would that have been possible?

Mr. HAMILTON. Well, that, of course, is hypothetical.

Senator O'MAHONEY. Purely, but more or less realistic.

Mr. HAMILTON. I do not know. I could not sit here and say there was not anybody in America who would not have supplied the money if we could have found them, and then there—I cannot say.

Senator O'MAHONEY. But you found General Motors with the money and with the leadership?

Mr. HAMILTON. Well, we had more than that in General Motors.

What I wanted to say was that of the companies that I knew at that time, many of them with plenty of financial resources, none of them had the mental approach to this problem that was necessary to take it at that stage that it was in then, and the courage that went along with it to move it to its point of success. At least that was our opinion in the matter.

Now, there may have been such people if you could have found them, and so on.

Senator O'MAHONEY. I am frank to say to you that so far as I am concerned myself, I know of few men with whom I have come in contact in my almost 20 years in the Senate—and I have come in contact with a lot—who stood out more than Mr. Kettering did as a man of vivid vision and comprehension and courage to carry out his ideas.

Mr. HAMILTON. That is what I say. There are those kind of people, but just who they were and where they were, they were not available to us as far as I know.

Now, I said earlier this morning Mr. Codrington and I thrashed this problem over back and forth between us probably for a year, how do we get out of this box we are in, and every possible phase of it was analyzed, and we analyzed the mentality, if you will, of the people that we know in the industry, those not only in the diesel industry and otherwise, but we did not know any of them that we felt had the courage to take hold of that thing in its nebulous stage, and start from scratch in view of the fact that we were going clear out of the metallurgy we knew at that time. We had to have crankshaft bearing loadings that nobody had ever used before, and that meant we had to go back and develop the bearing material to make the thing work, and that gets us into new metallurgy. We had to use piston temperatures that nobody had ever used. We had to devise a machine to measure the temperature of a piston clear across the crown. Nobody had ever done it before. That was the nature of the problem, so you had to have courage to step into that one.

Senator O'MAHONEY. Yes, indeed.

Mr. HAMILTON. Yes, sir.

Senator O'MAHONEY. And that is a great human quality.

Mr. HAMILTON. That is right.

Senator O'MAHONEY. And, as you say, it is not confined to narrow circles.

Mr. HAMILTON. Absolutely not.

Senator O'MAHONEY. It may be found anywhere.

Mr. HAMILTON. That is right.

Senator O'MAHONEY. The fact that it is found in America, all over the Union, is the thing that has made America great.

Mr. HAMILTON. You are exactly right, Senator.

Mr. BURNS. Mr. Hamilton, I would like to have you briefly describe the development of the first diesel which was put on the road in 1934, I believe, probably on the Burlington Zephyr.

Since we are going to try to reach another witness who is scheduled to be heard this afternoon, I would like you to sketch the development, and if you feel that there are more details which really should be made part of the record, you could supply them at a later time,

and we would be glad to include them right at this point in your testimony.

I understand that, as the result of these efforts which were put forth by yourself, the Winton Co., and the staff of General Motors, you did put on the road in 1934 the first true diesel train as part of the Burlington Zephyr? If you will tell us about the development of that at this point, please, sir.

Mr. HAMILTON. Well, I will try to shorten it up by giving the highlights of what happened.

The first decision that was made in connection with the development of this new engine, carrying on right where we left off a moment ago, was a decision made primarily on the approach to the problem by Mr. Kettering.

He had come to a conclusion independently and by himself in his previous studies and activities and the researches that they had done, that if you wanted to get the optimum horsepower out of a pound of metal in a diesel engine, you had to go to the two-cycle principle to do that, and at the same time retain exhaust temperatures, bearing pressures that were commercially practical.

So on that assumption, I will say this, just digressing for a second, that when he introduced that idea, Codrington almost had apoplexy, and I did not know enough about the thing to have my blood pressure go too high.

Senator O'MAHONEY. I can scarcely imagine that. I think you know a good deal about everything that comes under your attention, sir.

Mr. HAMILTON. I knew the history of 2-cycle efforts throughout the country, and there may be people in the audience who remember the old Elmore, who helped to build a 2-cycle gasoline-engine automobile in 1910, which used to blow up, and that was the reason why I thought that might have been within the memory of some of us here.

So there had been plenty of effort to build a two-cycle engine, but they had a bad odor connected with them, a very bad odor.

It could be done if you had enough apparatus and a stationary base, or a ship where you had a lot of auxiliary room, and room to put a lot of gadgets, but it was something else in a locomotive engine.

However, Mr. Kettering convinced us he knew what he was talking about, or at least that was the kind of line of exploration to be taken and undertaken. That is why I say we picked that up—that is where we picked up. It was a long, laborious process.

Now, I will move along fast. We, as I said a moment ago, had a lot of new things to learn, a lot of new things to do, that had not been done before; and, of course, those projects were pulled out, segregated, and a crew put on each one of the problems, knowing what they were coming to, including the development of an injector.

We were starting almost from scratch on that one. So we put all of these different projects into the hands of different people, and they were given the necessary staff and facilities and testing apparatus and instrumentation equipment to pursue their objectives.

Without covering the failures that we had, which were many, as I recall it, just as an illustration of the failures—Mr. Gene Kettering, the son of Dr. Kettering, who was a graduate of one of our engineering schools and also of our General Motors school, was assigned to follow the piston end of this development.

He made and tested 48 different pistons, 48 different designs of pistons, before we got one that would live long enough that made us believe we had a piston, something we could call a piston—48 of them that were tested before we finally got that one licked, and we went around and around through the whole engine the same way.

Now then, finally we were in shape and we decided to build 2 prototypes of this engine, based on this cylinder development, and it was all done with 1 cylinder; that is, an engine, after you do that, you can put as many of them on the crankshaft, 4, 6, 8, or a dozen or as many as you like, so you work with only 1 cylinder.

When we got 1 cylinder so it functioned, we decided to build two 8-cylinder engines, and they were of the size and general character that represented, in our judgment, at that time the type of an engine in physical get-up that would produce a good 100-ton, 600 horsepower switching locomotive.

That was a big market because I had made up my mind that an engine with the right characteristics would make a good commercial engine that the railroads would buy.

So we built two of those engines, prototypes, and built them by hand, and once they were finished, we exhibited them at Chicago at the World's Fair of 1933. They were sitting in a glass room at one end of the building of the Chevrolet assembly exhibit, and they furnished most of the current for the operation of that exhibit at that time.

During that year we found a lot of things wrong with them. We had living quarters right underneath in the basement below, with a mechanical crew around there, and by the heroic efforts of those fellows we kept those engines running that year so that we were not out of the woods yet.

The public did not know that; neither did the newspaper fellows, but there they were just the same.

By the end of the year, we knew what we had to do with that engine, so we proceeded to start plans to change and make corrections on the weaknesses and so forth and, of course, naturally, we scrapped those two engines as soon as the show was over.

But we proceeded then on the manufacture of engines for our locomotive trade.

Now, right at that stage, right in there, another development came on, one of a historical character.

In the fall of 1932, the Union Pacific Railroad, Mr. Carl Gray, whom you probably know very well, and Mr. Averell Harriman who, at that time, had been just made chairman of the board, and likewise one or two other people, Mr. E. E. Adams, whom you probably knew also—

Senator O'MAHONEY. I did.

Mr. HAMILTON. What was that?

Senator O'MAHONEY. I did.

Mr. HAMILTON (continuing). Decided among themselves that they were going to make a new motor train—they had plenty of gas-electric motorcars on the railroad. As I told you this morning, they had been pioneers of the McKeen car, and as time went on they had bought a lot of gas-electrics from us, so they had a lot of experience.

They determined they were going to make a high-speed train, a small train, to operate on the railroad as a competitor for the buses and

even the airplanes as they thought airplanes were starting at that time.

This train was to be small, comfortable, and have a speed up to 120 miles an hour.

They came to us with their plans. We had long sessions back and forth as to how that trick could be done, and the Pullman Co. was in the picture, the three of us, the railroad, the Pullman Co., and ourselves, we finally cooked up a design.

After the design was set they made a wooden model of the design, and Mr. Stout, the airplane designer, the man who had designed the original Ford three-motor plane, took the model over to the University of Michigan, ran the wind tunnel tests on this model because we had to see what wind resistance we were going to meet with and how much horsepower it would require and how fast we could run this thing.

We got all this done, and when we were finished, the railroad announced they were going to build the train.

From the model, the newspaper fellows got pictures of it, and all of you remember it, but that launched an entirely new activity.

Immediately following that, Mr. Budd, president of the Burlington Railroad, said, "I am going to do the same thing."

Senator O'MAHONEY. Well, perhaps it might be appropriate for me to say at this point that it was one of those engines drawing the city of Los Angeles that brought me from Cheyenne to Washington to conduct this hearing.

Mr. HAMILTON. Thank you. I am glad it got here on time.

Well, the next point, to answer your point, and I am getting right to that—when the Burlington, Mr. Ralph Budd—decided they were going to build a train, they took a little different tack, but the same thing—he decided, knowing about our development with the diesel, he talked with Mr. Kettering, he talked with me, they knew all about it.

Now, what we were doing, they knew all about these engines at the Chevrolet exhibit, and he knew about them falling apart, incidentally, and all of that, he decided, however, he would like to take one of those engines for his train, have one of those engines for his train.

So we were to build him one, and that was done, so we put the two trains in operation the next year; one of them with a gasoline engine in it, 600 horsepower—that was the Union Pacific, that was the first streamliner; then came the Burlington Zephyr, a three-car train, again the same general character and general get-up, with the diesel engine in it.

Now, that is the first diesel we built and put on the railroad, and that was sold and considered a commercial product. That went into the Zephyr, the first Burlington Zephyr, went into it, when it went into service on the railroad.

They did not put it in service right away. They used it for exhibition purposes and tested it, and so forth, but that was the first one.

Does that answer your question, Mr. Burns?

Mr. BURNS. And that diesel was actually ordered in advance by the Burlington Railroad?

Mr. HAMILTON. Yes, sir.

Mr. BURNS. Now, what was the next step in the manufacture of diesels of any type, diesel locomotives of any type, after you got this first one on the road?

Mr. HAMILTON. Well, immediately following that, after the Zephyr went out and went to work, well, really before that, before there was any great really historical background for that, the Union Pacific started to expand their philosophy.

In fact, before we had got the first train in operation, the Union Pacific had decided to build a five-car train—that was the first City of Portland, Senator—and used the diesel by that time, they being satisfied that the diesel was the answer.

At the time they built their first train the railroad—Mr. Adams, particularly, built it experimentally; he did not want to go out and fail and expose the railroad to ridicule by failure—but at the time they got ready to step ahead, which was later in 1934, they started ordering powerplants and trains, and they moved so fast there that it was pretty hard to even tell the story.

In no time at all they projected first a 5-car train, then the 9-car train, then the 12-car train, and they moved the horsepower right quick from 600 to 2,400 horsepower, so we found ourselves building 12-cylinder engines, 16-cylinder engines, and multiplying them to provide the horsepower for the first fleet of the Union Pacific diesel trains; and that group eventually evolved the first City of San Francisco, City of Portland, City of Los Angeles, and the first two City of Denver trains came out of it.

All of them, all the equipment from the car builders and the power plant from us, were ordered right one after the other.

Senator O'MAHONEY. The City of Denver was the first of the whole fleet, was it not?

Mr. HAMILTON. No; the City of Portland was by accident. That was a five-car train, and then came the City of Los Angeles.

Senator O'MAHONEY. I rode the City of Denver before I rode the City of Portland, so it came first in my mind.

Mr. HAMILTON. But they all came so fast together, Senator, unless you were there watching, you would not know which one was the first, because they all—the reason I say that it was a headache for our people, too, was because we had to get people who could work 20 hours a day and sleep 4 in order to keep them running at that stage of the game.

We had so many of them, and they were scattered from Chicago to Los Angeles to Portland and San Francisco, and we just did not have time to digest the problems that went into it, you see, but we finally made them go.

Now then, right after that Mr. Burns, right following that development, came this development: We recognized at that time while all these first locomotives that were built were part of the nature of the train, they were the lead car, if you will, which was the powerplant, that is, that was the locomotive, in some cases they were tied permanently to the train through an articulation arrangement, but they belonged to that train; they were designed to pull that train.

In some cases we had auxiliary generating equipment in the locomotive to supply all of the train lights, and in some cases even heating equipment. So they were tied to the train; they were not locomotives that you could cut loose and pull any train on the railroad. They had to stay there.

We knew and, of course, the railroads were, of course, in touch with us all the time. They knew what we were doing and what we were thinking.

They insisted they wanted diesel locomotives to do any kind of a job on the railroad, that is, haul any kind of a train, and we knew that was the natural course of evolution.

So we designed for experimental purposes, for our own purpose only, an 1,800-horsepower cab or locomotive, and got permission from General Motors to build one of them. That would give us two running together in multiple which would be 3,600 horsepower, and we did not have a plant at that time, any facilities of building the cab superstructure and all that kind of stuff. So we made a deal with the General Electric Co., and so they started building them at the Erie works of General Electric in 1934, late in 1934.

Mr. BURNS. These locomotives that had been built for the Union Pacific and the Burlington, how much of those were built by General Motors and how much were built by other companies?

Mr. HAMILTON. Well, all of the superstructure and all of the trucks were built by other companies to the design that the builder, in this case Pullman and other car builders and ourselves, worked out jointly together, so that the apparatus would fit and all that; and then we assembled the mechanical and power equipment in those cars.

The cars themselves—that is, the superstructure and the under-gear—were all built by car builders. We had no manufacturing facilities at that time.

Mr. BURNS. Were the engines made by the Winton Co.?

Mr. HAMILTON. That is right.

Mr. BURNS. And where did you get the electrical equipment?

Mr. HAMILTON. The first trains were all from General Electric Co.

Now then, before we—there is a point I want to bring in right here—after we announced we were going to build this first pair of units purely for experimental purposes—and they are like a laboratory, you put things in them you would not normally put in locomotives that you were going to have to use in everyday service—two other railroads wanted to get into the act.

One was the Santa Fe and the other was the Baltimore & Ohio. We could not talk them out of this. They wanted some of their own to play with, and we offered them these for tests and demonstration and so forth.

They said, "No, we want our own. You fellows are going to run this thing all over America, and everybody will want to try it. We want one of our own."

So we built an extra one for the Baltimore & Ohio, and two for the Santa Fe; that made five that we built at Erie at that time, all at the same time.

Mr. BURNS. Were those considered for passenger service?

Mr. HAMILTON. Those were considered for everything. We tried to work out a combination there that we could test whether they were any good in freight service, any good in passenger service. We thought we ought to learn what that sort of animal could do on a railroad alongside a steam locomotive.

So we built this locomotive along that line with double-end apparatus. Each cab had a control apparatus at each end. You do not have

to turn them around; they were multiple. The two cabs together were 3,600 horsepower.

All those locomotives came out about the same time. Santa Fe got theirs and, incidentally, they changed their plans before they got it, and it was the locomotive which they used to launch the first Super Chief, which was one of the early transcontinental trains.

It was the locomotive that handled the first schedule of 39 hours and 45 minutes on the Santa Fe Super Chief between Chicago and Los Angeles.

The B. & O. used theirs between Washington and New York in pulling one of their fast local trains.

We took 1 of the other 2, and they were tested on virtually every railroad in America, doing every kind of a job they could do for quite a long time.

They worked on all the lines. Those were the locomotives that established in the minds of the Baltimore & Ohio that they could really go ahead, and they started buying power, and did buy power as soon as we were able to build it for the Capitol Limited, and they have been on there ever since. That was immediately following that.

Now, that is what happened immediately after the launching of the first Zephyr.

A little time in there, and by 1934—I think I might go on with that point—by 1934 we had decided that we had to have a manufacturing plant of our own. It was not practical to continue to operate the way we were. The think was blooming too fast, moving too fast, so we built, started, the first unit of a plant at La Grange, Ill., in the spring of 1935, and that was built there. The first engine that we turned out of that plant was a switch engine in May of 1936.

Then operations began to expand fast from that point on. The locomotive, passenger locomotive, developed into a finished product quickly of the streamlined character with the cab up, and with all the fancy colors that you are accustomed to seeing today. They all expanded very fast from the early design.

So by 1938 we had gone so far and so fast, and the acceptance of the locomotive had been so great that we decided to do another thing at La Grange, and that was to tool up to manufacture our engine in a volume basis, and the electric equipment, as well, the transmission, so we added that to the plant in 1938.

Now, going backward there for just a minute, one of the first things that we did was to start a switch engine program—and I covered that quite a little this morning, and I want to get that in the record because it is an economic story involved in it—as soon as we got some engines to spare, we built a couple of prototype locomotives with this new engine in it, and put two of them on an eastern railroad. They were built at General Electric's Erie plant.

Mr. BURNS. Was that 1934 or 1935?

Mr. HAMILTON. They were built in the early part of 1934. I think they went in service in the spring of 1935. That locomotive was to have the characteristics we had concluded in our own minds for good switching locomotives, to solve the problem, because here we were now, looking over the record in 1936, we brought out our first locomotive, and I checked it that time to see what had happened in that field, and I found that the whole industry from 1924 on through 1936 had built

190 of these diesel switching locomotives, that is all; whereas we, in the motor-car field had put out some 800 or 900 of those things, and yet the economics involved, the economic potential in this switching service, was far greater than it was in the motor-car field.

Mr. BURNS. What years were these?

Mr. HAMILTON. 1924 to 1936.

Now, therefore, the first thing we did, after we had these prototypes working, we knew the engine was right, then we set up to manufacture these locomotives, and the first movement in that direction was this: we scheduled 50 locomotives, we built 50 of them. None of them had been sold, we just put 50 of them into production. We did that to get a cost figure; there was no other way to find out what a locomotive like that was going to cost except to build it.

We had estimated it, yes. Now, then, I would like to introduce this one there because I am going to blow my horn a little bit here, senator.

Senator O'MAHONEY. You are welcome to it, sir. I have tried to help you a little bit this morning already.

Mr. HAMILTON. Thank you.

At that time, and now we get into an economic side of this picture, at that time, and that was an interesting thing because here we were now, we are in 1936, and Electro-Motive had been running in the red for 6 years. We had not been making any money for the corporation; we had been at the table all right but we had not done any more than been supplied with food, so to speak. We made no contribution dollarwise.

Senator O'MAHONEY. Oh, you got your salary, but not your savings.

Mr. HAMILTON. But we had to get that out of Chevrolet; they had to pay our salaries. We were not doing that.

Senator O'MAHONEY. Let us emphasize that. [Laughter.]

Mr. HAMILTON. Well, that suits the Chevrolet fellows all right.

Well, anyway, here we were in an economic situation. So, taking a look at the switch engine, the switch engine that had been built by the industry at that time, that weighed a hundred tons and had 600 horsepower, sold for \$84,000—that was the market price, that is what they sold them for—when we made a study of what our costs ought to be, we did not know what they were going to be, but what they ought to be, we decided to market the locomotive at the outset—we could not justify it for any more than \$72,000. So we introduced the locomotive in the market at \$72,000.

Now, there was a hook on that one, however, that we had to try out on our railroad friends.

We said to them, "This \$72,000 price is for a standard locomotive. There are no modifications. The only thing we can do for you is to give it the color you want. We will paint it any color you like, but nothing else. Take them right off just as they come."

Senator O'MAHONEY. No ribbons?

Mr. HAMILTON. No ribbons, right off the shelf—just as they come—\$72,000.

"Now, if you will go along with us and accept a standardized locomotive without all of the peculiar gimmicks that you are accustomed to having on your particular locomotive, and that your competitive railroad over here would not have on a bet," which was the customary practice in the steam locomotives in those days, "then this is what

will happen: as our costs go down we will reduce the price of the locomotive; that is the bait. But you have got to give us a start and you have got to buy a standard locomotive."

So we made a deal with some railroads on that basis, and they had my word that as we reduced our costs we would not absorb that in extra profit nor carry it over to take the loss on some other models. On that model if the costs went down they would get the benefit of it.

Senator O'MAHONEY. On that model?

Mr. HAMILTON. We were talking about; that is the only model we were offering at that time.

Senator O'MAHONEY. Yes.

Mr. HAMILTON. We followed the same practice on all models as time went on. The price of that locomotive went down successively \$72,000, \$69,000, \$67,000, \$65,000, \$63,000, and to \$59,500, and that is where it was when the war came on.

We passed; we dropped the price in those steps that I have just indicated.

Senator O'MAHONEY. When did you first sell any of these locomotives?

Mr. HAMILTON. 1936.

Senator O'MAHONEY. You built 50 in what year?

Mr. HAMILTON. That year. We put them in production. I think we finished that year about 27 or 30. But the balance was finished next year. We put them in production and started manufacturing that year, and I think we finished up—we had to build the plant that year, and we did that and also built about 30 locomotives.

Senator O'MAHONEY. My understanding was from what you said in order to determine what the costs would be as compared with your estimates—

Mr. HAMILTON. Right.

Senator O'MAHONEY (continuing). You thought it was necessary to put them into production?

Mr. HAMILTON. That is right.

Senator O'MAHONEY. So you decided to produce 50 locomotives?

Mr. HAMILTON. That is right.

Senator O'MAHONEY. When you came to that decision, did you have any orders?

Mr. HAMILTON. No, sir.

Senator O'MAHONEY. So you undertook this rather large expenditure necessary to produce 50 locomotives without a sale having been made at that time, or an order?

Mr. HAMILTON. That is right.

Senator O'MAHONEY. When did you make the first sale?

Mr. HAMILTON. Well, I cannot tell you when we made the first sale, Senator. I know when we finished the first locomotive that was sold, and that was in May 1936.

Senator O'MAHONEY. When did you begin to test it?

Mr. HAMILTON. Just as soon as they came out of the plant. We had prototypes already that we had built before this. So that we knew when they came out, other than putting them on the test track and to see that the manufacturing and assembling was correct, that was all we had to do.

Senator O'MAHONEY. Yes. But the prototypes you did not test on any railroad?

Mr. HAMILTON. Oh, yes. They were on the Lackawanna here, and we had that background to design this locomotive from. We built them at the Erie works 2 years before that.

Senator O'MAHONEY. That is, with your prototypes, and they were not the Lackawanna property?

Mr. HAMILTON. They paid for them.

Senator O'MAHONEY. They bought them after the tests?

Mr. HAMILTON. They saw what they could do, and they bought them.

Senator O'MAHONEY. But the tests were made before the purchase?

Mr. HAMILTON. Yes.

Senator O'MAHONEY. Did you have any similar tests before purchase on other railroads?

Mr. HAMILTON. You mean of that particular locomotive?

Senator O'MAHONEY. Of any.

Mr. HAMILTON. Well, I do not think so. I cannot recall, because by that time the locomotive was already commencing to establish itself so fast that the railroads started giving us orders without strings.

Of course, we had absolute guaranties on these locomotives. The railroad was not taking any risk. We guaranteed a certain operating cost; we guaranteed a certain performance, and we gave them an absolute guaranty on the locomotives so far as their design, material, and workmanship were concerned, covering then everything except abuse and wrecks. So they were not taking any chances.

Mr. BURNS. How many locomotives were built and sold before you began to construct the plant at La Grange?

Mr. HAMILTON. Well, I do not know just—when you say locomotives, now, are you talking of what I think of as a locomotive, a locomotive that handles those fast trains across the continent, and while they were part of the train? While they were part of the train, they were, in fact, locomotives. In fact, they were tied to the train and could not be untied; it did not make any difference, they were a locomotive.

Mr. BURNS. How many diesels had you developed and made, starting in 1934 on these particular railroads?

Mr. HAMILTON. Around 20.

Mr. BURNS. And each of those was ordered by the railroad in advance and made according to their requirements?

Mr. HAMILTON. Well, yes; under the circumstances, yes, that is right.

Mr. BURNS. So that before you actually went into this mass production development, you had sold approximately 20 of these diesels that were on the road?

Mr. HAMILTON. They would have been 20 that we would have built in our own plant had we had a plant. We did not have a plant, but there were twenty-some-odd units that went out that we would have built ourselves had we had the facilities.

Mr. BURNS. Each of those was ordered in advance?

Mr. HAMILTON. That is right.

Mr. BURNS. Were those sold for cash? Did the railroads pay for them at the time they were purchased?

Mr. HAMILTON. Yes, sir.

Mr. BURNS. Now, with respect to the 2 prototypes of the switching engine, were those accepted by the Lackawanna before you began to produce the total of 50 which you have just discussed?

Mr. HAMILTON. Yes.

Mr. BURNS. Did you have any orders for any of the 50 before you actually began production of them.

Mr. HAMILTON. Not that I recall. I think during the period we were producing them we did get some orders, but I cannot swear to that just how that happened. They all moved fast. We increased our production right from that point on, never slowed down.

Senator O'MAHONEY. I think you said, in response to a question, that you decided to build these 50 without having received an order or having made any sales.

Mr. HAMILTON. That is right. Well, that was the decision made then, and the orders had nothing to do; but before the locomotives were finished I am sure there were some orders placed.

Mr. BURNS. Do you know how much money was used in the development of these locomotives from the time that General Motors took over Winton and Electro-Motive in 1930 until 1934 when you made a commercial sale?

Mr. HAMILTON. No; I do not. The reason I do not, the reason I give you rather a quick answer on that, is that I have attempted to get that figure myself without success, and while we can get a reasonably close, pretty reasonable, figure, yet the facts are there were so many people in the corporation working on it, doing certain parts of the job, and the costs were not segregated, it was a part of their budget, so it was awfully hard when the job was all over to find out just exactly how much money had actually been spent that should have been charged to the job.

But now if you are talking just about the engine itself—is that what you have in mind, or the whole program?

Mr. BURNS. Well, the whole program up to that point.

Mr. HAMILTON. The whole program, I would say in the order of \$4 million.

Mr. BURNS. Were these engines for these locomotives that were built in 1934 and 1935 built at the Winton plant?

Mr. HAMILTON. Yes, all engines were built at the Winton plant until 1938, all that we used.

Mr. BURNS. In 1936 when this plant at La Grange was beginning to produce locomotives, were the engines still produced at Winton?

Mr. HAMILTON. Yes, sir.

Mr. BURNS. What was produced at La Grange?

Mr. HAMILTON. Just the superstructure and the trucks and assembly; that is all. The electric equipment was supplied by the electrical people, the electrical firms. The engine was supplied by Winton, made in Cleveland; the superstructure and trucks were built by us at the La Grange plant, and the assembling of everything was made there.

Mr. BURNS. When the La Grange plant was designed, was it designed in such a way that it could expand into the manufacture of the engines and the electrical transmission?

Mr. HAMILTON. Yes, sir; in three directions.

We designed and laid out the plant—we did not know what the problem was then. We knew that to make this a commercial proposition we had to learn how to produce these locomotives following, to some extent, modern concepts of volume production.

But, on the other hand, we were dealing with such big pieces and heavy pieces, big components that the then conventional method of moving material, that is, the conveyor system and all the other gear that is used for transportation of material in these high production plants, were not applicable.

The pieces were too big. So we did not know what the problem was. We had an idea how we were going about it, but we had to learn it first, so we built at the outset a big bay with the ultimate, the optimum, in flexibility. It had a hundred feet span, was 500 feet long, and had a 200-ton crane in it; that ran the full length, so we could build the locomotives in any direction or shape we wanted by picking them up and moving them around, you see.

But not knowing what else to do, we had to go out on a limb, and then we constructed the plant so that we could build in three directions, and we learned how to build on a volume basis, and we learned slowly and by degrees.

We did not know the answers to that one at the outset, so all we could do was to lay down a broad pattern that had enough flexibility to meet the problem whichever way the cat jumped, and that is what happened.

Mr. BURNS. Were these first 50 built on an assembly-line plan?

Mr. HAMILTON. Yes. They were, after a fashion. But the switch engine is a pretty simple animal so far as the superstructure and the cab, and that is all we built there; and that is just very simple, a very simple thing.

We did jig for them obviously because we never put anything in service that had not been built on jigs; we did jig and set up the necessary jiggling for that. It is not tooling per se, as we call it; it is tooling, but it is the crude end of it, jiggling.

Mr. BURNS. At what point did the LaGrange plant make the complete locomotive, including the engine and electrical transmission?

Mr. HAMILTON. In 1938. There is a point in there that I want to bring in, too, I might say, and that is that we were faced with right along through that whole period of constant expansion of the plant. Our switch-engine demand went up fast, so we were constantly expanding to meet that problem. Road power went up fast, passenger locomotive business went up fast, so that before we could complete one plan, why, we were faced with an additional, so we were always overlapping.

We were starting a new program about the time we ended an old program.

The economy of these locomotives, once they got in the field, were way out and beyond anything that we had anticipated, even the passenger locomotive, but primarily the freight and the switching locomotive, and I use the switching locomotive to make the point.

At the end of the first month, you could almost go out and count up what you have saved on switching locomotives because of the method of accounting and the simplicity of that accounting.

When you get into a passenger locomotive on the main line, that is something else again. You have got to run a few hundred thousand miles and see where you are at before you can really come up with

an intelligent accounting or an accounting as to what the locomotive has done and compare it with steam.

So the first reaction was on these switch engines, and what the railroads did and what we did, we proposed at that time, in order to get the cream on the thing and get the best economic showing, that they be assigned to what we called 24-hour tricks, that is, operation where there is a switch engine working in a certain area or territory around the clock, 24 hours a day, generally 3 crews, each one of them working 8 hours.

The steam engines, they always had to go to the roundhouse to change crews because you needed to have the fire cleaned, you had to have water, and you had to have a few services on the steam engine; so the locomotive was always in the process of going to the roundhouse, getting a crew change, and a new crew coming back, so that would take a portion of the time just going back and forth.

With the diesel we fixed it up so that it would stay out there day and night and work for 1 week steadily from Monday morning to Sunday night without ever shutting down, without going for fuel, without any service requirements except a crew change at the end of the shift period.

When we found that kind of assignment, that is where we started these switchers, and we soon found out right away on those kinds of assignments that those switchers earned at the rate of 25, 30, 35 percent of their price per year in economy, and the minute that happened, the effect of it on these railroads was just like, well, you can imagine what it was, at that time, particularly in the late thirties, where they just had been coming out of the depression, most of them in financially tight conditions by virtue of what had happened to them.

Along comes this product that would pay for itself in earnings so quickly; there the answer was an immediate acceptance.

From the time we started to just take orders they were giving us for diesel switchers, why, as an illustration of that point, I checked here a while back and between the first locomotive that we put out, which was in May 1936, out of the plant, and the date that the Office of Defense Transportation took us out of the switch-engine business, which was at the end of 1941, we had put out 642 of those locomotives.

So in that short period of time, there were 642 of those locomotives that went into service against the whole industry's contribution in the 11 years before that of only 190.

So that proved that all we needed was an engine that would do the job, a switch engine that would do the job, and the minute we proved it, the minute we introduced it, the railroads bought them faster than we could make them.

Mr. BURNS. So that after you showed those two prototype switch engines there was no problem in selling the engines?

Mr. HAMILTON. None at all.

Mr. BURNS. What were the factors which caused you to decide to build the entire locomotive and cab instead of simply the engines, which was the business you were originally in?

Mr. HAMILTON. You mean the cabs and trucks?

Mr. BURNS. Yes. You started to build the whole thing at La Grange.

Mr. HAMILTON. Well, there were two bites of that. One was, we first started to build the cabs and trucks, and then after that we started

to build the other components there, but you are talking now about the cab and truck itself?

Mr. BURNS. Yes, because your experience over the many years had been trying to develop the combination of the engine, and you made that through Winton, a combination that would go on the rails, and you bought the cab and trucks, and so forth, transmission, from other people, and the first successful diesel passenger locomotive in 1934, and the first few after that were the cabs and trucks, and so forth, were also made by other people. So what were the factors that caused you to want to make the entire locomotive in your own company?

Mr. HAMILTON. I get your point. It was an accumulation of problems there.

In the first place, aside from what our program was, and that we wanted to work to, we had the practical problem where these things were built in outside shops, and here is what happened. We had to accept all this involved and delicate apparatus through their shop and have it come in through their storage department to be handled through their shop. Some of it would get lost in the process, and finally after you would sit around with this on the floor awhile, why, we would get a crew together and start putting it together.

We had to use the builder's shop labor for the installation, and whether he was a good mechanic or a poor mechanic, that was just too bad so far as we were concerned.

When the work was not right, we had to tear it out and do it over again; we could not say that a man is no good, and get another one in his place.

So we were faced with the shop problem from that standpoint.

There was no responsibility on anybody's part, on that part of the work because the builder said, "You fellows installed it."

We did. But we installed it with their labor over which we had no control.

So there was no end of headaches.

So after we got them on the railroad, we had to get socks and lunch baskets out of the fuel tanks, and socks out of the pipes they had left in there, and dirt, and so forth, and it took us the first 30 days to get them cleaned up, so they would run after those kind of experiences. So we decided that was not too good.

Now the other side of it was this. We fully intended at that stage to set up standard models that I spoke of to the Senator a moment ago like the standard switch engine on which we changed nothing but the color, so the whole philosophy was based on that.

To do that we had to have a substantial tooling and jiggling arrangement in the manufacture of these car bodies and trucks because they represented labor and material in a big way the same as the rest of the locomotives did, so in order to do that we had to do it ourselves.

There wasn't any outside builder going to do a thing like that unless we came along and guaranteed for a long period of time a big volume of production for him. We wouldn't do it, so if that was to be done, we had to do it.

So those are the two major reasons. There are others, but those are the two major reasons.

Mr. BURNS. Do you know what the approximate capital investment was in this plant at La Grange after it was equipped to make the complete locomotive?

Mr. HAMILTON. Well, now, you have jumped something there. When you say "complete locomotive" do you mean at the time we were just building the cab and the trucks and sending the engine over from Winton and buying electric equipment from General Electric or when we were building—later on you see we built the electric equipment there and the engine there, which we didn't do at the outset, when we built only the cabs and trucks and assembled them. What point do you have in mind?

Mr. BURNS. I thought it was in 1938 when you were building the engines.

Mr. HAMILTON. That is something else again. At that same time we decided for the same reason—even in our own family we got to a point where we weren't getting along with Winton. We couldn't get the results out of Winton we wanted for a combination of reasons.

Furthermore, the engine itself as originally designed had the influence of the Navy in it tremendously. That I didn't bring in here, but it is in the record and so forth.

The Navy was interested in the same engine with certain modifications for the submarine fleet, so in the design of the engine, particularly the multiple cylinders, the 900 horsepower or the 1,200 and 1,600, we had done a lot of things to it engineeringwise to suit the Navy to meet submarine requirements that complicated the engine for use in a railroad, particularly from a manufacturing and a railroad—particularly from a manufacturing and a maintenance standpoint.

But the Navy still wanted it. So we left that engine as it was at Winston and set up and designed a new engine that used all of the experience we had accumulated on it and tooled up for the new engine at La Grange in 1938 to manufacture an engine exclusively for the locomotive, and at the same time, we decided to build our own electric transmission in 1938 at La Grange, for a lot of very good reasons, but at any rate brought under our own control both in design, manufacture, scheduling, and responsibility.

And at that time, by the time we got to that stage, we were in the order of 22 million in the plant, building, tools, and what have you.

Mr. BURNS. And did you build any other shops in other parts of the country to service these locomotives once they were on the road?

Mr. HAMILTON. No.

Mr. BURNS. Do you have any branches or depots for the repair or servicing of the locomotives? I understand there were 5 or 6 in the warehouses or factory depots.

Mr. HAMILTON. Well, there is a little tail to that cat, too, if you will pardon my language.

Back in the middle twenties, right at the early days in the motorcar business, and I think I covered that once before, we decided that it was necessary to have available, close by, the necessary spart parts to support these motorcars in service, so we set up warehouses strategically located in different parts of the United States.

Now then, as time went on after those cars were in service, the next thing that we were faced with was that the railroads were not qualified

to maintain ignition systems, carburetors, and other delicate apparatus of that kind. They could take care of the heavier work of maintenance. They had shop people that could do that, but they were not prepared to do it.

So we, just as a matter of defense, got to setting aside a little room in these places, and we would let the railroads send their carburetors and their ignition systems over there, and we would send them another supply, and we would bring the old ones in and overhaul them, repair them, and then we would send those out. So we took care of that sort of work for them in many cases. And that went on through the motor-car period, which ended in 1930.

Now, when we introduced the diesel locomotives, we had the same thing, only more components that required the attention of that character. So we started in the same places repairing injectors, governors, and other delicate pieces of apparatus, so they gradually, those warehouses, the parts warehouses, gradually expanded to more than just a warehouse. They became small repair stations for doing this special work.

Now also, as this whole program evolved over a period of time, the railroads leaned on us to repair their main generators, and their traction motors, which are big units. They are big things. They weigh on the order of from 6 to 11 thousand pounds apiece, and they are full of lots of involved mechanisms.

The railroads sent those back to us for repairs when they failed or when they had run their miles out and had to be overhauled. We found ourselves sending them from all over the United States back to La Grange.

So slowly in the points where the population of locomotives were heavy we started to further expand these warehouses. We had to repair electric traction motors, and eventually the generators, so that was a further enlargement of the same philosophy.

And as time went on the railroads finally got to a point, some of them, not all—where they wanted us to overhaul their engines for them, too, the complete engine.

So instead of sending those all the way across the continent or from New York to La Grange, and then sending them back again, paying the transportation on them, having them tied up in inventory or in freight trains, we decided to, in some places, first one, then another, to expand facilities for rebuilding the engine.

So the net result of that is that we had gotten now into pretty big operations in certain spots over the country just by a slow evolutionary process that started back there in 1925, and we are doing that. Does that answer your question?

Mr. BURNS. Yes. Now, was that a change in the general practice of the railroads with respect to repairing and servicing steam locomotives?

Mr. HAMILTON. Oh, I think so. The railroads are perfectly capable and have been, they have been in the steam-locomotive business for a century, so they had developed all the technique, all the people, all the facilities that they needed to take care of steam locomotives and everything about a steam locomotive was known to them.

Now, I do think there were places in the country where Westinghouse, with their intricate equipment, some of the feedwater people that made a very involved gadget probably had facilities to support

the railroads and help them on certain complicated things, but in principle they overhauled their own.

When the diesel came along, here is the problem. You had one on this end of the railroad, one on that end, they were running everywhere, there was no concentration of them, and we had, in the locomotives, a lot of involved things that take a long time to acquire the technique, experience, and the little fixtures necessary to do a good job repairing and not only that, but there wasn't enough of it in many cases at the outset for them to develop a crew to do repair work. There was no efficiency.

By our having a place not too far away, and every railroad sending all their stuff in there, we could have enough business and enough work to keep a couple of good mechanics on the job all the time.

Senator O'MAHONEY. The point seems to be this, Mr. Hamilton: That when the steam locomotive was the primary source of power for the railroads, the railroads had shops all along their respective lines.

Mr. HAMILTON. Right.

Senator O'MAHONEY. In which their skilled mechanics were employed to repair the engines and even to rehabilitate them sometimes almost completely.

Now, the development of the diesel end of the warehouse and repair shop schedule of the General Motors, taken over from your original electric-motive company, would indicate a transfer of this shopwork from the railroad shops to the shops of General Motors divisions, does it not?

Mr. HAMILTON. No; I don't think so.

Senator O'MAHONEY. Well, you said you were expanding your repairs in the shops?

Mr. HAMILTON. When I say expanding, the expansion that has occurred already and it probably is a matter of record or the question wouldn't have been asked here by Mr. Burns, but the expansion is a drop in the bucket.

The small railroads have very few facilities and have just a few locomotives usually. The big railroads, most every one of them have set up giant facilities of their own to rebuild these locomotives. They have their own shops.

About the only time they use our facilities is to take care of their peak load. When they get volume they can't handle, they will send the overflow to us.

Senator O'MAHONEY. You mean the railroads are using their own shops to repair—

Mr. HAMILTON. Oh, they spent millions of dollars on beautiful new shops, the Union Pacific—

Senator O'MAHONEY. To handle the diesels?

Mr. HAMILTON. Yes, sir. The Union Pacific that you know so well has just completed a plant at Salt Lake City, Utah, as big as this building, and thoroughly tooled and equipped to maintain, overhaul, and repair diesel locomotives. Yet we have a plant right there too.

You say how come. Well, that is the point. The cycle problem of maintenance on the diesel can run into peaks like that, and they run the miles out on trucks and motors, run them out on generators, run them out on engines and they cannot always cycle their rebuild

program to have a uniform flow. They get caught on peak, so we are there as standby.

If they get caught and can't handle their peaks with their normal staff, why, then they will ask us to step in and take a few. But the percentage of that that we are taking is a drop in the bucket.

Senator O'MAHONEY. The chart which was displayed here yesterday indicated, as I recall, that the peak in the manufacture and sale of the diesel engines, both for freight and for passenger, was reached about 1950. I think the total at that time was somewhere——

Mr. HAMILTON. No; I think we had a higher peak than that. During the Korean buildup is really when we went to the top. We went way up in production, all builders did. Everybody was working at their capacity at that time, and that was in 1952 and 1953.

Senator O'MAHONEY. I was speaking only of the total.

Mr. HAMILTON. Yes, the totals. Around 1953 I think was where the peak was.

Senator O'MAHONEY. Now in 1950 apparently the peak was for switchers 4,174 from all sources, for road switchers 1,240, for road freight 1,585, for road passenger the peak was the following year, 188 instead of 158, whereas in 1954 these figures had dropped, in the case of switchers, to 983, road switchers 635, road freight engines to 85, and road passengers 27.

Now what does that indicate for the future?

Mr. HAMILTON. Before I answer your question, Senator, I would like to call your attention to this fact: that these statistics here—who prepared these? Where do they come from?

Clause 4 says this: "Diesel figures from 1934 to 1944 are shipment, figures from 1945 to 1954 are for orders."

(Discussion off the record.)

Senator O'MAHONEY. For the record, I might say that the testimony of Mr. Hamilton has been tremendously interesting to everybody in the room. I know that from the press, I know it from my staff and I know it from myself.

I think that the presentation of the material within the experience of Mr. Hamilton this afternoon has been a very excellent example of what can be done in a congressional hearing when frankness on both sides is employed.

I think that this session this afternoon would be great food for thought for the Brookings Institution, for the three professors who interviewed General Motors executives and for the other General Motors executives.

I think you have given an excellent example of what a business executive ought to do, Mr. Hamilton, in discussing with a congressional committee one of the most important problems that can come before our Government, and I hope that all of these gentlemen I have named before will take heart from the way you have been treated at this table to believe that they might be treated the same way.

Mr. HAMILTON. Thank you, sir.

Senator O'MAHONEY. Will you proceed?

Mr. BURNS. Will you tell us the approximate capital investment in the diesel facilities, both at LaGrange and at these other branches?

Mr. HAMILTON. Now, just a minute; my mind was floating a bit. Ask that one over again.

Senator O'MAHONEY. We will take a recess for 2 minutes.

Mr. HAMILTON. Well, I can come up faster than that. Repeat your question, please.

Mr. BURNS. While I was talking with you informally, you mentioned a figure of about 75 million for plant and equipment, and an inventory of about \$60 million.

Mr. HAMILTON. Yes, I see what you are talking about, true enough.

Our total investment, according to my memory—and I am going by memory, but I think it is pretty accurate—our total investment in dollars that we finally attained, and that represents right up to around 1954, after we got through with the last project in tools and equipment, plant, land, and the manufacturing facilities, the peak reached was around 74 million.

Now, of course, by that time it involved 3 plants, 3 manufacturing plants, 1 in Cleveland, 2 in Chicago, in addition to these branches and everything that we own, that is the peak.

Mr. BURNS. Have you any division of that sum between the three manufacturing plants and these branches that you have?

Mr. HAMILTON. No, I don't have that.

Mr. BURNS. Now, when you first began to sell these locomotives in 1934, through the middle thirties, did you have any problem in getting the railroads to purchase these and to switch from steam to diesel?

Mr. HAMILTON. No, I wouldn't say we had any great problem. There were times when we had to employ sales effort, there is no question about that. We had to take the story to different railroads and tell them what had happened, what we were doing, and what was being done, and what the performance results were in different spots.

So I can't say that we didn't have some difficulty. Otherwise they would have been lined up on our doorstep to buy them, and they did not line up quite that way.

Now, we had to have a sales organization. There might be some of them around here, I mustn't leave them out. But, on the other hand, it was very small.

As I recall, our sales expense was .03 percent of our sales volume. If any of you know costs, why, you recognize how little effort we put forth.

Senator O'MAHONEY. These salesmen, Mr. Hamilton, were not in the same status as the automobile dealers in the country?

Mr. HAMILTON. No, they didn't get a commission, if that is what you mean.

Senator O'MAHONEY. Well, they were not scattered around the country furnishing their own capital, their own warehouses and their own repair shops. They were operating under the company itself?

Mr. HAMILTON. Oh, yes; they were salesmen and employees on a salary, but you understand that in the merchandising of a product of this kind, you don't do that the same way.

Senator O'MAHONEY. Oh, I know.

Mr. HAMILTON. Not in the same way that you merchandise the ordinary product.

Senator O'MAHONEY. I know you don't.

Mr. HAMILTON. And you don't sell these railroads very many things. You might sell them, or talk them into trying 1 or 2 or 3, and you might call their attention to a situation and generate some interest on their part that will result in a sale, because you know their own people, and

so forth, and you say, "You know, you have got an operation out there in Dakota that you ought to give a thought to," and get the thing generated and in motion, but you don't sell them anything.

You can't go out and sell one of these railroads 10 or 20 or 30 million dollars' worth of locomotives on fast talk. They just don't do that. They buy them, and they don't buy them unless they are convinced that they are spending their money the right way and that they can stand up in front of their directors and support their position.

So no conversation of a salesman is going to persuade them very much. They don't do that.

Mr. BURNS. Is it the practice in selling locomotives to deal with the top railroad executives, such as the president?

Mr. HAMILTON. Well, no. It works both ways, but generally what happens is this: Now, when the locomotives were first introduced and when the motorcars were first introduced, yes, we went to the president of the railroad as a rule, and told him, for this reason, that their mechanical people and their staff people were in no position to process the buying of a thing like this through their normal procedures. They couldn't take responsibility for it. They didn't know anything about it. They don't know if it will work or not.

If the old man, or the boss up here, wants to buy one, let him buy it and let him take the responsibility. So he did, but he didn't take the responsibility. He put the responsibility on the manufacturer, you see. So the manufacturer relieved everybody of responsibility, supplied him with the locomotive. The boss says, "Take this out and try it and see if it is any good, and what it will do."

That is the way we started. Now, after they had bought a few and had had some background and experience and gotten some knowledge from experience of this new type of power, why, then automatically it starts to flow, then, through their regular routine.

They have their committees; when the railroad decides they are going to buy some locomotives, they generally have a mechanical committee or power committee, as they call it. Those fellows will gather all the data together as to the experience of the locomotives in service, what their costs are, what the general records are, and probably decide on the type of power they need for the job, what kind of a locomotive it is to be, what the gear ratio ought to be, what the horsepower ought to be.

When they get all through with that, they come up with a recommendation and that floats all the way up to the top, and finally the decision is made at the top. But the recommendation is not very often rejected.

As a result, whatever the recommendation of those mechanical departments are these days, that is pretty apt to be what the president or the people making the final decision accept. That is the process.

Mr. BURNS. Now, in the middle thirties when you were putting these first diesels on the road, did the railroads have any problem in obtaining the finances to make the purchases?

Mr. HAMILTON. Oh, yes; 40 percent of the mileage of American railroads were in receivership when we started this program.

Mr. BURNS. And how did that affect your ability to sell diesels to them?

Mr. HAMILTON. Materially.

Mr. BURNS. How did you overcome that problem?

Mr. HAMILTON. You spoke about a recess here. You are taking me off up another creek now.

Mr. BURNS. Well, let's take 5 minutes for that answer.

Mr. HAMILTON. Well, that story goes back into the twenties again, or late twenties, or 1930.

Mr. BURNS. I would like to have it just from 1934 to 1937.

Mr. HAMILTON. Without getting into the background, there is no use in going into it.

The point is this: The railroads have a habit, a practice—if there are any other people in the room that have had the same experience we have had, they will agree with us—it is the practice, and a psychological fact, that when carloadings are down and traffic is down and business is down, they just do not make capital expenditures—period. And what they mean by that is an AFE, that is, authority for expenditures. That is a sacred document on the railroad.

So that when the thirties came along, there wasn't anybody on any of the railroads that I knew—not most of the railroads—any officers that had the courage to even make out or ask for an AFE, for a pencil, let alone a locomotive. It just wasn't done. If there are any railway equipment people here, they will go along with me.

Now, then, here is what we were faced with, to get off of dead center where we were in 1930. We had at that time a lot of studies that we had already made with the railroads, as to where we could apply motorcars that would save them some money, even the gasoline cars, and that is all we had to offer. But when the crash came, and the carloading curve went down, the curtain was down and everything stopped.

So to revive a lot of these deals we had in motion, we cooked up a new one, a new idea, and it was this: the railroads, as a matter of policy, have authority, as a practice, to lease locomotives, they can rent them one from another, Pennsylvania can rent them from New York Central if they need them, pay so much a day for them, and that is an ordinary operating expense, and that is the way it is done. When they get through with the locomotives, they send them back.

So we came up with this idea. We would lease them these motorcars and we would get a piece of paper from them, and the paper says this: that they will lease this motorcar for 3 years or 5 years, or whatever it is, and they will pay so much a month rent for it, no down payment, no obligation to buy it whatsoever. Any time they want to send the thing home, they can do it, there is nothing in there about that. But if they keep it, they will pay us so much a month.

At the end of the 4 years we will sell them the locomotive, if they want it, for \$1.

That went into operation in 1930, and some of that paper was in the deal when General Motors took us over. I made a deal with the Cleveland Trust Co. to finance the paper, and they took it, furnished the capital for that investment. So we launched the motorcar business that way.

Senator O'MAHONEY. That was sort of a conditional sale?

Mr. HAMILTON. In effect; but legally speaking, it was not a sale—

Senator O'MAHONEY. No. You are right.

Mr. HAMILTON (continuing). Because we could not hold the railroad to anything.

Senator O'MAHONEY. You didn't transfer the title?

Mr. HAMILTON. And no obligation to pay any specified amount of money.

Senator O'MAHONEY. Oh, well, there was a lease payment.

Mr. HAMILTON. No; just a rental agreement that as long as they kept it, they paid us so much a month, but they could send it home any Monday morning if they wanted to, at any time.

Senator O'MAHONEY. But while they kept it, they would pay that amount?

Mr. HAMILTON. That's right; but no obligation to pay a specified amount.

Senator O'MAHONEY. Of course, in the sale of automobiles now, we are told that the lease period, so to speak, to use the word that you have used, is being extended, payments can be made over a longer period, and a longer period of time, and the down payment becomes less and the amount of credit that the dealer must give to the purchaser for his old car increases, so all through the country dealers are telling us, but always under an injunction: "Don't use my name."

Things are getting pretty tough. So when you speak of the tough times that your company was facing before General Motors took you over, I am inevitably reminded of the tough times that dealers are now facing in the sale of automobiles, but that is another story.

Mr. HAMILTON. It is another story, except this one point: have they used up their fat that they accumulated in these lush days they have just been through?

Senator O'MAHONEY. That I don't know. We will get to that.

Mr. HAMILTON. They must have some fat left over to work on for a while.

Senator O'MAHONEY. We will get to that.

Mr. HOGAN. Have you been talking to any General Motors dealers?

Senator O'MAHONEY. I haven't missed a dealer in the whole shebang.

Mr. HAMILTON. Ask them that question, Senator.

Mr. HOGAN. All you have got to do, Senator, is ask how much he has made for the last 5 years, then see if he is crying wolf; poverty with a ham under your arm.

Senator O'MAHONEY. When you come in, Mr. Attorney, with the dealers and we can assure them that there will be no reprisals, why, then, we will get the story.

Mr. HAMILTON. Shall I go ahead, Senator, and answer this question?

Senator O'MAHONEY. Yes, please.

Mr. HAMILTON. Now, when we reached a situation in 1936 and 1937, and our volume of production was going up and the railroads wanted the locomotives, we were faced with the problem that you have just introduced.

So I went to General Motors, and recalling the experience we had with these motorcars back in the early days—and, incidentally, we sold those motorcars at that time to probably as poor railroads as existed, and the record indicated there was never a payment one day late, never in the history of that whole transaction. So that was a good credit basis.

So I went to General Motors and told them what the problem was, and so forth, and their first reaction when I told them what I wanted to do, was very, very, very unfavorable because it didn't make too much sense to talk about selling locomotives to a railroad without any

downpayment, when it was already in the hands of receivership, and that is what I was talking about doing.

And, of course, immediately they wanted to see the balance sheet of these lines we were talking about, and I said that is not the place to look, we don't look at the balance sheet on a railroad, not under these sort of conditions. We have got another yardstick, and I told them what that yardstick was, what we would look at.

So they went along. They gave me \$5 million to play with as rotating funds. So I started using that; whenever we met a condition, we would operate on this lease arrangement for many railroads.

There was one railroad, and I will tell you this story, and it can be a matter of record—there was one railroad in the hands of receivers. I knew the management, knew the property, had known them for a long time, and they had changed management in the meantime, new people had come on the scene and had taken charge and had a program for rehabilitation.

That railroad at the time I am speaking of was 1937, was on the c. o. d. list for sparkplugs from us. The purchasing department, when they wanted a spark plug, then sent a man out there and they had the cash right on the barrelhead.

They changed management on that property. The management sat in my office at La Grange and went over the program for rehabilitation, the things they were going to do. I knew the individual. He was off another line. I had known him for a good many years.

When he got in his automobile, I said to him then: "When you get around in your new program to wanting motor power, call me up and I will send you whatever you need."

I eventually sent him 37 locomotives without any cash payment. Every payment was met right on the barrelhead, right on the button, every one was paid right on schedule.

Now that launches a new philosophy of railroad financing of railroad equipment. It started to expand from there, and in no time at all the railroads as they got a little money started to make downpayments on the same basis, so that reduced the interest rate, because we were charging 4½, that is the cheapest money I could get out of the GMAC group, and that was pretty good.

Well, anyway, finally when the bankers commenced to see the potential of that one, they hammered the price down to 1¾ percent; 1.78 was the price railroads got to paying following the same broad philosophy.

It got a little more legal and they got the thing rolled up in a little different form, they got a lot of new names for it, when they got to making downpayment, but in principle that is the way this whole locomotive program finally got in motion from a financing standpoint.

Does that answer your question?

MR. BURNS. Yes. Did the Burlington pay in cash for this first diesel?

MR. HAMILTON. Oh, yes; lots of them paid in cash. There were not too many.

SENATOR O'MAHONEY. Mr. Burns, it reminds me a great deal of the financing program which the Government established in 1933 and 1934 when it established the Public Works Administration and advanced the credit and built the courthouses and the bridges, the railroad bridges and others around the country, because it had confidence that the people of the communities would respond.

Mr. HAMILTON. Right.

Senator O'MAHONEY. They took a leaf out of your book or you took a leaf out of the Government's book.

Mr. HAMILTON. Well, it worked.

Senator O'MAHONEY. It worked.

Mr. HAMILTON. That's right.

Mr. BURNS. In what year did GMAC begin this financing of the purchasing of diesels?

Mr. HAMILTON. They did not really finance them. We financed them. We underwrote the paper, but they were the ones that handled the cash.

They were the bankers, but they just sat there and went through the motions, that was all, and that began in 1936, and I would say other than a few interim deals, once in a while we still get in a situation where a financing program in a big block, the locomotives are not delivered on schedule, there is a hangover period. We sometimes use them for interim financing, but the banks handle it nowadays. GMAC is not in it.

Mr. BURNS. How long was the period when GMAC furnished the funds of this financing?

Mr. HAMILTON. Oh, 3 years or something like that, 2 or 3 years, that's all, launched it, that's all.

You would be surprised—a lot of this paper that GMAC took a lot outstanding at the rate of 4½ percent, after a third of it was paid off, the banks paid it off at a lower rate, took it right out of circulation.

Mr. BURNS. But at the time GMAC made this fund available to your division, the banks were not willing to furnish the funds to the railroads?

Mr. HAMILTON. No; they didn't know whether these diesel locomotives would last a week or what would happen to them. There was no security in a diesel for a banker at that time. He had to have it establish a record of life before they could afford to use them as collateral.

Mr. BURNS. So that this financing was essential to sell these locomotives that you were producing on this assembly line principle?

Mr. HAMILTON. No; I would not say so, because if we had not had any of the lines in receivership, the railroads that were able to pay cash in those days would have kept us rolling. We could still have sold a lot of locomotives—the Santa Fe did not need it, Union Pacific did not need it, Burlington did not need it, Pennsylvania in those days, New York Central did not need it.

It was small railroads that used it as a rule, and as time went on maybe some of the others used it, if money was cheap enough. But it was only the smaller railroads and those that were in the hands of receivers with no credit at that time that used it.

I don't think we had over, as I recall it, there was never over 25 or 30 million of that paper floating around at any one time. That was probably the peak. It helped over the hump, but it was not vital.

Mr. BURNS. That is all I have.

Senator O'MAHONEY. Mr. Hamilton, Mr. Burns, the chief counsel tells he has no additional questions to ask of you at this time, and neither do I. We have 20 minutes before the 4:30 adjournment time that I said earlier I would like to meet, and I want to invite you now, sir, you have been so ready with your responses to the questions of

counsel and myself, I want to extend to you the opportunity to make any additional statements that you desire with respect to the problem as it has been presented here today or as it has been presented heretofore.

The floor is yours.

Mr. HAMILTON. Thank you.

Senator O'MAHONEY. I am going to make an example out of you, sir, a good example.

Mr. HAMILTON. Well, thank you, Senator. I hope that I will not be a horrible example.

Senator O'MAHONEY. Oh, I am sure you will not; I am sure you will not.

Mr. HAMILTON. Those two words generally go together, you know, "horrible example."

Senator O'MAHONEY. Excellent example, sir; an excellent example.

Mr. HAMILTON. The phase that I would like to carry through, and I can do it quick and fast, I think, on this whole program, generates in my mind, to some extent, from statements made here yesterday, and things I have read in the newspapers.

Senator O'MAHONEY. Oh, now, don't be disturbed by the things you read in the newspapers.

Mr. HAMILTON. They were generated though in the hearing, that is the point. If they were just made in the newspapers it would be something different. The boys can explain about anything they like.

Senator O'MAHONEY. Just so long as they spell your name right, that is all you need to request.

Mr. HAMILTON. I would like to get the picture completed a little bit, because the inference here, and these are the two that I did not like, and I am not speaking for General Motors, I am speaking for myself because I launched this whole project. I started the Electro-Motive Co. with 1 stenographer and 1 secretary and my own money, and I have been right in the middle of that development up to where it is today.

I was president of it in this whole life, and I laid the policies down and have more or less been the guiding influence. So what has happened there is largely my guidance.

Now, when somebody tries to get in the record that the success of the enterprise was due to two artificial conditions, one was the situation wherein influence of the General Motors Corp. was one of them, and another one was a regulation established by one of the departments of the Government that gave us an advantage, and therefore because of that we dominate the business and are the controlling factors in the business, I take exception to those statements, and I will point out some of the reasons why I take exception to those statements.

As I indicated here today and as the record, when it comes out, will show, we did not go into the diesel locomotive business per se until the beginning of 1934, but back of that was 14 years of experience and development.

When we introduced our first diesel engine and diesel locomotives out of our factory, we had 6 years' specialized development and experience and engineering and research to develop an engine that would make it possible to do that.

Senator O'MAHONEY. Now you are speaking of your own company?

Mr. HAMILTON. I am speaking of all of us. It is all related together now. As far as I am concerned, they all run together. When we started on the development—

Senator O'MAHONEY. It comes segment by segment. In telling your story, you went back to the foundation of Winton and you went back to the foundation of Electro-Motive.

Mr. HAMILTON. Right.

Senator O'MAHONEY. And you have told a very logical and clear story of the development.

Mr. HAMILTON. All right.

Senator O'MAHONEY. So it divides itself into different periods.

Mr. HAMILTON. All right. I will start out in 1930, that makes my point, when we started definitely to build or to design a diesel locomotive or diesel engine, I should say, that was required for the production of our future products. We have been over that this afternoon.

Now by 1936 and 1937 we had had 6 or 7 years of investment, technical advance, experimentation, and history behind that engine, so that we had then ready to produce a complete locomotive, line of locomotives with this historical background of experience.

Senator O'MAHONEY. But not the diesel locomotive.

Mr. HAMILTON. Yes, sir.

Senator O'MAHONEY. Are we in agreement? You were not ready to produce the diesel locomotive?

Mr. HAMILTON. In 1936 and 1937 we were.

Senator O'MAHONEY. Oh, yes, but in order that the statement may be perfectly clear, it was not until you went to General Motors.

Mr. HAMILTON. We went to General Motors in 1930, so that is where I am starting.

Senator O'MAHONEY. But your background was long prior to that.

Mr. HAMILTON. Oh, yes; I covered that a moment ago. But I am getting right down to a specific point now, that we started specifically on the diesel engine, out of which this whole development has really taken place, economic development involving the transition from steam motive power to diesel motive power on the railroad.

We started that development specifically in 1930, and by 1936 and 1937 we had a commercial product that we were willing to put in the hands of buyers and guarantee it.

Now, then, by the beginning of the war we were well advanced in our tooling, in our manufacturing facilities, and in the design of all of our models. We had switching locomotives of two sizes; we had what we call a semi-all-purpose type or transfer locomotive. We had a passenger locomotive of different sizes, and we had developed a freight locomotive and it was in production, well into production, so that we had a historical background of that development.

Now, figures that were given out here yesterday indicated that at the beginning of the war rules were established that handicapped our competitors to our advantage.

Here are a few figures we got together that I would like to review that don't seem to bear that out. Now, in the first place, all of our models had been designed, developed, tooled and were in production and had been in use sometime before the war began. I am dealing now here with percentage figures of the total diesel locomotives.

In 1940 the record shows that we sold 67 percent, and when I say "sold," I am not talking about orders, I am talking about deliveries.

There was a sheet here that I was looking at a little while ago that was talking about orders. Well, orders don't mean anything in our books because a lot of them are canceled, never filled, so we are talking about shipments.

In 1940 GM had 67 percent of the business and their competitors 33. In 1941 we dropped to 57 and they went up to 43; 1942 we dropped to 53, they went up to 47; in 1943 we dropped to 40, they went up to 60; we dropped in 1944; we had 50, they had 50. 1945 we had 51, they had 49; 1946 we had 65, they had 35; 1947 we had 62 and they had 38.

The point I want to make is this: that if the advantage we were supposed to have because we were concentrating on freight locomotives and our competitors were concentrating on switching locomotives, then why doesn't their advantage continue on out and beyond the war based on the running starts they had in the switching locomotive business during that period, because the record shows very definitely that they had a tremendous advantage?

We were not making any switching locomotives at all, and they were in high production on switching locomotives. In fact, the record shows that back in 1940 their switching locomotive production—or is it 1941?—their switching-locomotive production was up almost equal to ours, so that they knew how to make them, they had all the facilities for making them, and they went into the war with just as good manufacturing facilities apparently for making diesel locomotives as we had.

Now, then, they were running under a sheltered position on the switching locomotives and we were running under a sheltered position on freight locomotives. It is true we had built some freight locomotives so that by the end of 1942, which is when we were shut down or taken over in effect by the Navy, the other people had people putting war material into their plants, too, and we had them in our plants, in our case it was the Navy and we had to build engines and take over to supply power for the LST program, which meant all of our production plus an expanded production. So for the first half of 1943 we did not have any capacity, engine capacity, for locomotives at all.

Now, then, the net result in there was that in 1942 General Motors production of switching locomotives was at 116, next year it was 15; 1944 it was zero, and 1945 we built 39.

Now, in freight locomotives we had 2 in 1940; 47 in 1941; 96 in 1942; 184 in 1943, and then the material situation was freed, we were given the necessary material to build up the capacity, we met our Navy requirements, and we were permitted to move ahead.

So our total production in 1944 was no switch engines, no passenger locomotives, but 500 freight locomotives. Now, the competition that year built 315 locomotives, evidently representing their total capacity. So I fail to see a contention that we had any advantage arising out of the war regulation confining us to freight locomotives.

Senator O'MAHONEY. In fairness, Mr. Hamilton, as I recall the testimony of Mr. Bruce Bromley yesterday, who is the attorney for the American Locomotive Co., he said that in his opinion the WPB

order which gave you the clear signal in the locomotive field was in the public interest; it was the proper thing.

Mr. HAMILTON. There is no argument about that.

Mr. HOGAN. That statement came kind of late, Senator, though. The implication had been passed out before that, and I think he realized they couldn't support the implication, so he made the statement that was different from what his client said.

Senator O'MAHONEY. We have the record before us, and it was in response to one of my questions that he made the statement to which I have just now referred, so that is all on the record, and I don't know that Mr. Hamilton needs to be offended by that.

Mr. HAMILTON. I want to say this here. I contend that the success of this enterprise, Electro-Motive division of General Motors, was due to advance engineering, advance planning, in some cases running as high as 6 to 7 years ahead of the product completion, and proper engineering and planning of the product itself for the market, and high efficiency in production to bring the product up to as high a possible quality at the lowest possible price.

Those are the factors that created a locomotive that the American railroad managements bought in preference to our competitors.

Senator O'MAHONEY. Without denying any one of those assertions on your part, and I wouldn't want to—do you want to make another statement?

Mr. HAMILTON. Yes, just one more. I want to put this in the record as an indication or proof that this division did a good job, whether I was there running it or not.

The record shows, our figures show, that the current selling price of our locomotive per pound is 31 percent above what it was in 1940 and I think everybody in the room knows what the price level change has been across the board for shoes, for this instrument [indicating] for your milk and for every other item that enters into daily living, probably on the order all the way from 80 to 150 percent.

We held the increases to 30 percent and we absorbed an increase in labor of 162 percent in that length of time, and an 80 percent increase in materials. That is a record, manufacturing record, behind this story that produced the type of a locomotive that dominates the American scene, there is no question about.

Senator O'MAHONEY. Well, I would be the last person to deny it, sir. I am not here to defend what any of our witnesses say, but nevertheless there is another factor in this case, and that is the factor which you brought out, that your company, the one that you so ably developed, making the gas-electric engine, was unable to carry out the new potential which you say and which you explained to Mr. Kettering.

It was carried out very successfully, so successfully that the railroads of America adopted it quickly, because General Motors had the capital and the willingness, through Mr. Kettering's leadership, to buy your company, absorb your company and make it a wholly owned subsidiary, and undertake the vast expenditures necessary to perfect the development.

Let us assume that it was completely perfected. To my mind it only demonstrates what has been clear on the record of the history of the development of industry in the United States.

When the Interstate Commerce Commission was first established, it was established because the railroads had extended beyond State boundaries and were no longer capable of being regulated in the public interest by the States. There was no partisan division at all about the establishment of the Interstate Commerce Commission to regulate the railroads.

When I was a secretary or a year after I had graduated from law school after I had resigned as secretary to my predecessor, Senator John B. Kendrick, a bill which he introduced and which Senator Kenyon, W. S. Kenyon of Iowa sponsored also, it was known as the Kendrick-Kenyon bill—Kendrick was a Democrat, Kenyon was a Republican. It was a bill to give the Secretary of Agriculture power to regulate the stockyards and the packinghouses of the United States.

The allegation on which the bill was based was that the packinghouses had complete control of the livestock industry, that they could make the price for the producer in the stockyards which they owned and dominated, and that they could make the price for the householder in the retail establishments which they held.

That bill was enacted in May 1921. It was signed by President Warren G. Harding. It was a bill which gave the Secretary of Agriculture more power to regulate a business than was ever given by Government before or I think since.

So what this country is faced with, and I think there can be no doubt about it, is this plain fact: that a growing segment of the national commerce, now practically all of it, is being dominated by a small number of corporations in almost every major industry which are created by the States, which have no power to regulate in the public interest, so that the regulation of commerce on which the life of every inhabitant of this United States depends is now in the hands of management, and we have an economic situation which is awfully different from the political situation.

In the political field we have the 48 States. In some cases these States attempt to regulate some of the businesses that come in. American Telephone & Telegraph Co. is regulated by the States, and it is also regulated to some extent by the Federal Government.

Bureaus and commissions and the Secretary of Agriculture have been given power to interfere in business to a degree never before accomplished. And the problem that is before this committee is the problem of assessing not the narrow responsibility for immediate or diverse acts, but the scheme of things by which our commercial regulation and our political regulation shall be on the same field.

Now this is at the heart, as I see it, of the problem that affects the world; the Communists upon the one hand, the Fascists upon the other, have each said that the control has got to flow from political management at the top.

I firmly believe that the greatness of America has grown from the fact that we have heretofore kept business and economics completely free, so we want to know in assembling the facts in this committee to what extent bigness itself, without any abuse at all, may be producing a concentration which will destroy inevitably the political liberty of the people.

Now that may to many people seem to be an exaggerated statement. I don't think it is, because I have watched the development through all these commissions and boards for 20 years.

I remember very well when, way back in the administration of William Howard Taft as President, the same problem that is before us now was before the Congress then: Under his direction George Wickersham, Attorney General of the United States, wrote a bill to provide for voluntary charters for business in the national field.

It was never passed but it was introduced, and as it happened, strangely enough, it was introduced by a Senator from my State who at that time was the chairman of the Judiciary Committee, Senator Clarence D. Clark.

This thing isn't a recent development, it is not a development of diesel locomotives at all. It is a development that comes from a thousand different angles, and it has shown clearly that there is a split, we have almost a split personality between political government and economic government, and so far as the present acting chairman of this subcommittee is concerned, his only purpose is to lay the facts out on the table, and I want to compliment you again, sir, most highly for your willingness and your great ability to tell the story as you have told it here this afternoon.

Mr. HAMILTON. I thank you, Senator.

Senator O'MAHONEY. Thanking you, sir, for your evidence this afternoon, the committee will stand in recess until 10 o'clock Tuesday next.

(Whereupon, at 4:35 p. m., the subcommittee took a recess to reconvene Tuesday, November 15, 1955, at 10 a. m.)

A STUDY OF THE ANTITRUST LAWS

TUESDAY, NOVEMBER 15, 1955

UNITED STATES SENATE,
SUBCOMMITTEE ON ANTITRUST AND MONOPOLY
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met, pursuant to recess, at 10:20 a. m., in room 424, Senate Office Building, Senator Joseph C. O'Mahoney presiding.

Present: Senator O'Mahoney (presiding).

Also present: Joseph W. Burns, chief counsel; Donald P. McHugh, assistant counsel; Joseph A. Seeley, assistant counsel; Gareth M. Neville, assistant counsel; Jesse J. Friedman, economic consultant; and Paul R. Beath, staff member.

Senator O'MAHONEY. Mr. Burns, your witness this morning, I understand, is Mr. Ewart Harris.

Mr. BURNS. Yes, sir.

Senator O'MAHONEY. Will you state his background, please?

Mr. BURNS. Mr. Chairman, Mr. Ewart Harris was one of the trial attorneys for the Department of Justice in the recent trial of the case in Chicago entitled "*United States v. Du Pont, General Motors, and U. S. Rubber.*"

Senator O'MAHONEY. Well, we are not trying that case, are we?

Mr. BURNS. No, Mr. Chairman. That suit involved the issue of whether Du Pont should be divested of its stock interest in General Motors and United States Rubber. The court decided that issue against the Government, and it is now on appeal.

Senator O'MAHONEY. That was a suit brought under the antitrust laws?

Mr. BURNS. That was brought under the Sherman Act, and our interest in that suit is based entirely upon the fact that a great deal of information was introduced into the record tracing the early history of General Motors Corp.

Senator O'MAHONEY. I want it clearly understood that in this proceeding this morning we are not attempting to retry that suit. We are not here to pass upon whether or not the charges brought against the Du Ponts by the Government in that particular suit were true or false.

What we are doing here is to try to build up the history of the General Motors Corp., its methods of doing business, its financial associations, its relations with dealers, with competitors and otherwise, all of which is designed to advise the Congress as to facts which may or may not lead to additional legislation. Is that your understanding?

Mr. BURNS. Yes, Mr. Chairman.

Senator O'MAHONEY. All right, you may proceed.

Mr. BURNS. I might say that the documents introduced at that trial are considered an authoritative source of historical information which should properly be a part of the record in these hearings.

To the extent that such data may illustrate the manner in which General Motors has grown and exercised its power, it is felt that this subcommittee has a direct interest.

Assistant Counsel Donald P. McHugh will interrogate the witness.

Senator O'MAHONEY. Very good, Mr. McHugh?

Mr. McHUGH. Mr. Harris, where do you live at the present time?

**STATEMENT OF EWART HARRIS, ATTORNEY AT LAW,
CHICAGO, ILL.**

Mr. HARRIS. 4134 North Ridgeway Avenue, Chicago.

Mr. McHUGH. What is your occupation at present?

Mr. HARRIS. I am a retired lawyer.

Mr. McHUGH. Were you in the Department of Justice, Mr. Harris?

Mr. HARRIS. For about 10 years.

Mr. McHUGH. In what division?

Mr. HARRIS. Antitrust.

Mr. McHUGH. During the course of your employment in the Antitrust Division, did you have occasion to be assigned to matters involving the General Motors Corp.?

Mr. HARRIS. Yes, I was assigned to the trial, after it had started, of United States versus Du Pont de Nemours, General Motors, and others.

Mr. McHUGH. For approximately how long were you occupied with the trial of that suit?

Mr. HARRIS. We were in actual trial in Chicago about 6 months. Then there were motions, briefs, and so forth. I think our final submission was early in 1954 after we had been through the trial in 1953, and then the decision was rendered late in 1954 against the Government.

Mr. McHUGH. What was your position in the trial of this case?

Mr. HARRIS. I was the second man on the Government team.

Mr. McHUGH. In the trial of the suit?

Mr. HARRIS. Yes, sir.

Mr. McHUGH. Will you tell us just briefly what the basic issues in that suit were?

Mr. HARRIS. It was pretty much as stated by Mr. Burns. The Government sought divestiture of Du Pont's holdings in General Motors, divestiture of the stock of the family and associates of the Du Ponts in United States Rubber, their stock and divestiture of the stock held by General Motors in Ethyl Corp., and a divestiture of the plants by Du Pont Co. which manufactured tetraethyl lead or ethyl, as it is known.

Mr. McHUGH. Mr. Harris, what did the Government charge was improper about the manner in which the Du Pont Co. and the General Motors Corp. managed their trade regulations?

Mr. HARRIS. The Government charged that the Du Pont Co. had bought into General Motors, that they had spent initially \$25 million to buy a market for certain of their products, paints, varnishes, fabrics, and certain products which were used in the automobile trade. They

charged that the market was closed to competitors to the extent of from 60 to 70 percent of the required supplies.

Senator O'MAHONEY. Well, that is not an issue here.

Mr. HARRIS. No, sir. We understand it is in the Supreme Court. And I might say to the Senator that the Government appealed only from that portion of the adverse judgment which related to the relations between Du Pont and General Motors. The rubber section of the case did not go up.

Mr. McHUGH. That case is now before the Supreme Court?

Mr. HARRIS. Yes, they have taken jurisdiction.

Mr. McHUGH. Do you have with you, Mr. Harris, some of the documents or copies of the documents which were introduced in evidence in that case?

Mr. HARRIS. Yes; we have printed duplicate originals. The exhibits in that case, numbering hundreds of them, were almost all of them printed before they were presented to the court.

Senator O'MAHONEY. Printed by whom?

Mr. HARRIS. Printed by both sides, sir. The defendants furnished us with a great many of their documents printed in this fashion.

Senator O'MAHONEY. Then do I understand that the documents that you intend to present here are undisputed documents?

Mr. HARRIS. They are undisputed, sir.

Mr. McHUGH. There is no question about the authenticity.

Mr. HARRIS. The only question of authenticity raised in the entire trial was a question of a letter which Du Pont was not able to find in its files. It merely stated to the Court: "We can't find that letter," and it was submitted in that fashion. There was no other controversy. There was a controversy about charts and statistics, but not any of this material.

Senator O'MAHONEY. I wanted to make it perfectly clear that we are not offering here any documents which are before the Supreme Court and on which there may be any dispute.

Mr. HARRIS. The dispute, if the Senator pleases, is as to the meaning, intent, the purpose. There is not a dispute—

Senator O'MAHONEY. And under the antitrust law as it exists.

Mr. HARRIS. That's right, sir.

Senator O'MAHONEY. Very well. You may proceed.

Mr. HUGH. Mr. Harris, I wonder if you would explain, by referring to the exhibits, reading those portions that you think are pertinent, the times and the circumstances under which the Du Pont Corp. first acquired its interest in General Motors.

Mr. HARRIS. Yes; I have a document here, Mr. McHugh, which is marked "Committee exhibit 1." It bore the trial exhibit number of 124 and was known in the trial as the Raskob report. It is a report made by John J. Raskob, who at the time, December 19, 1917, was the treasurer of the Du Pont Co. He at that time too, I believe, was a director in General Motors in the regime of Durant.

Mr. Raskob is reporting to the finance committee a suggestion that they purchase \$25 million worth of common stock of Chevrolet and General Motors. At that time Chevrolet was a separate corporation. It was, however, under the control of Mr. Durant.

I think it would be easier and simpler and save time, Senator, if I read just briefly the matter on page—well, we don't have a numbered

page, but inside they have numbered it, and it looks like paragraph No. 4. It is about the third physical page of the document, and says, "History and Nature of This Investment." This can say it more succinctly than I could. [Reading:]

The General Motors Co. was organized in 1908 by Mr. W. C. Durant. It was then a holding company—

Senator O'MAHONEY. Wait a minute, I don't follow you.

Mr. HARRIS. Perhaps to save time I will just briefly state it to the Senator. It isn't important to get the exact language. They were unnumbered pages and I assume in the shuffle they were missed.

Senator O'MAHONEY. Well then, you read from the page which is missing in my copy and then point up where it goes on.

Mr. HARRIS. That's right, sir. [Reading:]

The General Motors Co. was organized in 1908 by Mr. W. C. Durant. It was then a holding company and acquired control through stockownership of the Buick, Cadillac, Oldsmobile, Oakland Motor Co., Northway Motors Co., Western Motor Co., and 15 other companies, since which time the General Motors Co. has become an operating company and most all of the subsidiaries have been dissolved. In 1910, Mr. Durant found himself with properties, which, while they were earning \$10 million, were woefully short of working capital and it became necessary to borrow \$15 million. This was a difficult task, due to the motor industry being an infant industry and more or less discredited. The result was that in order to get the money necessary, he had to create a 5-year voting trust under the laws of New York, under which the bankers agreed to loan \$15 million for 5 years, with the understanding that they would have control of the board of directors. During the first 10 months' operation by the bankers, the net earnings applicable to the common stock of General Motors Co. dropped to \$2,474,000 and for the following 4 years the record shows net earnings applicable to common stock as follows:

1912-----	\$2, 856, 000	| 1914-----	\$6, 201, 000
1913-----	6, 410, 000	| 1915-----	13, 409, 000

The voting trust agreement expired in 1915 and the bankers and Mr. Durant were in dispute as to who was then in control of the stock. The dispute resulted in a compromise under which Mr. Durant elected 7 directors, the bankers elected 7 directors and Messrs. J. A. Haskell, Lammot Belin and John J. Raskob—

who were all Du Pont men—

were agreed upon as three neutral directors satisfactory to both sides.

I should say Mr. Pierre du Pont had been appointed by the bankers as 1 of the 7, so you had 4 Du Pont men there.

Senator O'MAHONEY. I note the statement which I understand is attributed to Mr. Raskob. It is his document.

Mr. HARRIS. Yes, sir.

Senator O'MAHONEY. No question about that.

Mr. HARRIS. No.

Senator O'MAHONEY (reading):

The dispute resulted in a compromise under which Mr. Durant elected seven directors.

There is no reference there to the election of the directors by the stockholders.

Mr. HARRIS. The bankers elected seven; that is true, sir.

Senator O'MAHONEY. But Mr. Durant elected seven.

Mr. HARRIS. That's right, sir.

Senator O'MAHONEY. And the bankers elected seven. There is no reference in this sentence to the selection of the directors by the stockholders.

Mr. HARRIS. By the mass of the stockholders.

Senator O'MAHONEY. Yes; I accept that amendment, "By the mass of the stockholders."

Mr. HARRIS. That's right, sir. Shall I proceed, sir?

Senator O'MAHONEY. Please.

Mr. HARRIS (reading):

Time soon demonstrated that Mr. Durant was actually in control of affairs through stockownership; he was elected president of the company and the earnings applicable for the common stock for the following year (1916) jumped to \$27,740,000 and for 1917, after making deductions for war taxes, \$27,704,000.

I don't think, sir, I will bore you with the balance here until we come to Chevrolet Motor Co., which is an important matter lower down on the page.

Senator O'MAHONEY. All of this goes in the record.

Mr. HARRIS. Yes, sir. Shall I proceed?

Senator O'MAHONEY. Please.

Mr. HARRIS (reading):

While Mr. Durant was a member of the board of directors and vice president of the General Motors Co. during the bankers' regime, he was not at all active and incorporated the Chevrolet Motor Co. for the purpose of manufacturing the Chevrolet car which has become very popular and fills a need not covered by the General Motors Co. The Chevrolet Motor Co. had a capital of approximately \$20 million, and in 1916 increased its capital to upwards of \$64 million and acquired control of the General Motors Co., in which company it now owns 450,000 shares of common stock out of 825,000 shares outstanding.

I won't call the Senator's attention to another matter here which I don't think you are too interested in.

Senator O'MAHONEY. I am interested in it all, make no mistake about that. I am anxious only that we get into the written record the full text of this whole matter and allow you to emphasize such portions of it by reading as you feel it is important to emphasize under the questioning of counsel.

Mr. HARRIS. Yes. Then on the next page, Senator, just above the figure 8, if you have it there:

It is, therefore, proposed (although the plan has not been put before the directors and stockholders of the respective companies) that the General Motors Co. purchase the entire assets of the Chevrolet Motor Co., except the 450,000 shares of General Motors Co. common stock in the Chevrolet Motor Co. treasury and assume the entire liabilities of the Chevrolet Motor Co., paying therefor approximately 318,000 shares (\$31,800,000) common stock General Motors Co. This 318,000 shares, together with the 450,000 shares in the Chevrolet treasury aggregating 768,000 shares of General Motors Co. common stock, will be the sole asset of the Chevrolet Motors Co., which will then be dissolved and in dissolution each share of Chevrolet will receive 1.2 shares of General Motors common stock.

They haven't placed it before the board of directors, but—

Mr. Durant is confident that there will be no trouble in its consummation.

Then if you come down to the bottom of the page:

The total outstanding voting stock of the enlarged General Motors Co.—that is, including Chevrolet—

would be approximately 1,080,000 shares, 50 percent or control of which would require ownership of 540,000 shares.

And then on the next page Mr. Raskob sets out in detail how that control might be obtained. Durant, he shows, owns 280,000 shares, Du Pont owns 223,000; that is a total of 503,000.

Senator O'MAHONEY. Wait a minute. I don't seem to have that. Mr. HARRIS. I don't have the page number. May I go briefly over it? Apparently something happened to these photostats.

Senator O'MAHONEY. Do you have a complete copy?

Mr. HARRIS. Yes, sir; this is the original that came from the files.

Senator O'MAHONEY. That is a complete copy?

Mr. HARRIS. Yes.

Senator O'MAHONEY. No omission of any pages anywhere?

Mr. HARRIS. Not in the slightest.

Senator O'MAHONEY. Very well.

Mr. HARRIS. Then if I might briefly call attention to this—sir, may I come by the Senator a moment?

Senator O'MAHONEY. Please do.

Mr. HARRIS. Page 9, sir, shows that Durant—

Senator O'MAHONEY. Let's read the introductory sentence.

Mr. HARRIS (reading):

The total outstanding voting stock of the enlarged General Motors Co. would be approximately 1,080,000 shares, 50 percent or control of which would require ownership of 540,000 shares.

Then they summarize how that could be obtained.

Senator O'MAHONEY. It says that there.

Mr. HARRIS. It could be summarized as follows:

Durant now owning 280,000 shares, Du Pont 223,000, makes a total of 503,000. Additional stock to be bought by Du Pont to make our investment \$25 million, say 50,000 shares or a total of 553,000.

Stock held by Wilmington people and Du Pont friends approximately 100,000 shares. The Wilmington people, it appeared in the trial, were friends of the Du Ponts—

Senator O'MAHONEY. Please do not refer to the trial. Let's refer to the documents.

Mr. HARRIS. Yes; except that that would explain it, that the Wilmington people were friends of Du Pont. That does not appear in the documents and is not controverted.

Senator O'MAHONEY. It appears in this document.

Mr. HARRIS. Wilmington people, the Senator might not know who they were.

Senator O'MAHONEY. That's right, I don't, but it says:

Wilmington people and Du Pont friends approximately 100,000.

Mr. HARRIS. Right, sir, making a total of 653,000 shares, which is more than the 540,000.

Senator O'MAHONEY. I think this is an interesting thing to read.

Mr. HARRIS. The return on the investment is anticipated as follows:

If the earnings of General Motors Co. for 1918 continue at the present rate, they will aggregate \$53 million. Estimated earnings for the Chevrolet Co. will aggregate say \$12 million, making total net earnings for the enlarged General Motors Co. before deducting war taxes \$65 million. Assuming that the war taxes will aggregate \$20 million, the net earnings of the consolidated company, after paying war taxes, would be \$45 million. Deduct the preferred stock dividend—that is \$1,200,000—

the balance is \$43,800,000, which equals 40 percent on a \$108 million General Motors Co. common stock then outstanding.

Senator O'MAHONEY. Now it would appear from this document that Mr. Raskob said that the total outstanding voting stock of the enlarged

company after the purchase of Chevrolet would be approximately 1,080,000 shares.

Mr. HARRIS. Yes, sir.

Senator O'MAHONEY. And that 50 percent thereof, or 540,000 shares, would control. He had recommended the purchase of Chevrolet.

Mr. HARRIS. That's right, sir.

Senator O'MAHONEY. And the setup after the purchase, therefore, according to his document, showed that with 540,000 shares being 50 percent of the total outstanding stock of the company that was being reorganized, Durant-Du Pont additional investment of 50,000 shares by the Du Ponts would total 593,000 shares or 13,000 shares more than 50 percent of the outstanding stock, and that adding to that 100,000 shares of stock held by Wilmington people and Du Pont friends, approximately 100,000, there would be a total of 693,000 shares in the hands of Durant, Du Pont, and their friends.

Mr. HARRIS. That's right, sir. I would then call the Senator's attention to the page that has a 12 on it, beginning at the top of that page, Senator, it is the summary beginning just a page before:

Summarizing the above, we have an opportunity to make a substantial investment in the motor industry with the following points in favor thereof:

1. With Mr. Durant we will have joint control of the companies.
2. We are immediately to assume charge and be responsible for the financial operation of the company. This involves the direction of cash balances which will aggregate upward of \$25 million and the handling of annual gross receipts aggregating \$35 million to \$400 million. From a financial standpoint, I feel that a consolidation of the financial divisions of the Du Pont and General Motors Cos. will be of tremendous advantage to us as well as to the General Motors Co. and is a thing to be sought and desired from our standpoint.
3. The Du Pont Co., if the class A stock is sold to the stockholders, will share in the profits of the industry to an extent equal to 120 percent on our investment and will receive 14 percent in annual dividends thereon; or in the event of carrying class A stock in our treasury the dividend rate will be about 12.6 percent and will share in the earnings about 42 percent, and this after paying \$20 million war taxes.

Senator O'MAHONEY. What was the characteristic of the class A stock?

Mr. HARRIS. That I don't know, sir. I think it requires an analysis, and I don't know just what—the analysis appears, however, on the following page up here. I haven't sufficiently informed myself of the difference between A and B.

Senator O'MAHONEY. Let us, Mr. McHugh, check on the corporation charter and find class A and B stock or any other stock that the company as thus being formed would have, any division of the voting stock and the like of that. Proceed.

Mr. HARRIS. Raskob proceeds:

4. Our purchase is on better than an asset basis.
5. Our interest in the General Motors Co. will undoubtedly secure for us the entire Fabrikoid, Pyralin, paint and varnish business of those companies, which is a substantial factor.

Fabrikoid, Pyralin, and so forth, were products made by Du Pont. I call the Senator's attention to this:

Management: Perhaps it is not made clear that the directorates of the motor companies will be chosen by Du Pont and Durant. Durant should be continued as president of the company, Mr. P. S. du Pont will be continued as chairman of the board, the finance committee will be ours, and we will have such representation on the executive committee as we desire, and it is the writer's belief that ultimately the Du Pont Co. will absolutely control and dominate the whole Gen-

eral Motors situation, with the entire approval of Mr. Durant, who, I think, will eventually place his holdings with us, taking his payment therefor in some securities mutually satisfactory.

I might say to the Senator that that prophecy was carried out. Mr. Durant vanished from the scene very shortly afterward. In the next paragraph the report says:

During the past 2 years our company has been doing big things. After the war it seems to me it will be absolutely impossible for us to drop back to being a little company again and to prevent that we must look for opportunities, know them when we see them and act with courage. If our fundamentals are sound, as they certainly seem to be in this case, the control of the General Motors Co. will be a task worthy of the best there is in us and will, I feel, afford many opportunities to keep our important men occupied with big things after the war.

Mr. McHUGH. Mr. Harris, do you have any information as to the approximate market position of the General Motors Corp. previous to the investment by the Du Pont Corp. of this \$25 million?

Mr. HARRIS. No. Just what do you mean by market position?

Mr. McHUGH. The relative percentage of the automobile market which the General Motors Corp. at that time had.

Mr. HARRIS. No; we did not go into that.

Mr. McHUGH. Was it recognized at that time that they were one of the largest automobile manufacturers in the field?

Mr. HARRIS. Oh, yes; without any question. It was an aggregate of, as you see, 4 or 5 companies that were then existing.

Mr. McHUGH. Is there anything further that you think has any significance?

Mr. HARRIS. We have 2 documents that more or less accompany that—3—that show how Du Pont financed its purchases and showed how immediately after the Du Pont money came in, there was a great expansion of General Motors. I could refer to those briefly if the Senator wishes.

Senator O'MAHONEY. I think it is worth while.

Mr. HARRIS. I have in my hand Committee Document 2, which is another report from J. J. Raskob, dated March 8, 1918.

Senator O'MAHONEY. This also seems to be marked "Defendants' exhibit No. 92" and "Government exhibit 128," so both parties in the suit were agreed upon this document.

Mr. HARRIS. May I change that a little just to show the Senator the way that happened? The Senator is right in saying that both parties to the suit were agreed on the authenticity of the document. However, this marking, Senator, occurred in this fashion.

Certain depositions were taken before the trial. I was not present at that, but I believe that at the time the attorneys for the Du Ponts furnished a lot of exhibits which they printed in this form. When we came to the trial, it was we, "we" meaning the Government, who put the exhibit in the trial, and it then received the court reporter's marking, and the number up there, 128, was the trial number.

If the Senator wishes, I will not refer to that, but that is the case. You will find 2 or 3 markings on many of these documents, but they are all here as Government exhibits received by me from the Antitrust Division at my request to appear before the Senate committee.

Senator O'MAHONEY. Very good.

Mr. McHUGH. Senator, for our purposes we have used the number at the bottom which is considered our Senate number.

Mr. HARRIS. And that is the one I shall use.
(The document first referred to by Mr. Harris is as follows:)

(Government Exhibit 124. In the District Court of the United States, Northern District of Illinois, Eastern Division. Before La Buy, J. Harry A. Harnden, Official Court Reporter)

DECEMBER 19TH, 1917.

To: Finance Committee.
From: Treasurer.

GENERAL MOTORS-CHEVROLET MOTOR STOCK INVESTMENT

I recommend that our Company purchase Chevrolet Motor Company and General Motors Company common stocks in accordance with plan herein outlined and with a view to bringing this formally before our company I have asked for a special meeting of the Finance Committee to be followed as soon as possible by a special meeting of the Board of Directors to consider the following resolution:

RESOLVED that the President and Treasurer of this Company be and they are hereby authorized to purchase up to \$25,000,000.00 worth of the common stocks of the Chevrolet and General Motor Companies paying for the Chevrolet Motor Company common stock an average price not to exceed \$115.00 per share and for the General Motors Company common stock an average price not to exceed \$95.00 per share; and

BE IT FURTHER RESOLVED that they be and are hereby authorized to do all acts and things necessary to finance and carry out this purchase in accordance with [plan outlined] *recommendations contained in Treasurer's report to Finance Committee, dated December 19th, 1917, modified as follows:*

METHOD OF FINANCING

While it doubtless will be necessary for the Du Pont Company to do a good deal in the way of temporary financing, my recommendation is that we incorporate [the Du Pont Motors] a new Company [under the laws of the State of Delaware] with an authorized capital of \$75,000,000.00, \$50,000,000.00 of which shall be Class A stock and \$25,000,000.00 Class B stock;

CLASS A stock to be a 12 percent cumulative non-voting [common] stock, callable at any time in the discretion of the Board of Directors at \$150.00 per share plus accrued and unpaid dividends;

CLASS B stock to be [common] stock with sole voting power and entitled to all earnings of the Company after the payment of the 12-percent dividend on Class A stock;

The Du Pont Company to subscribe immediately to \$7,000,000.00 Class B stock at par payable in cash, in consideration of which the [Du Pont Motors] new Company will allow us to make the following offer to the common stockholders of the Du Pont Company, to wit:

The common stockholders of the Du Pont Company will be entitled to subscribe to an amount of [Du Pont Motors] the new Company Class A stock at par equal to 30 percent of their present holdings of E. I. du Pont de Nemours & Company common stock, payable either in cash or Liberty Bonds at par and accrued interest. Payments may be made in full at the time of subscription or may be made in four installments of 7½ percent each, payable on the 20th days of March, June, September, and December 1918 respectively. Stock will not be issued until fully paid but interest at the rate of 6 percent per annum will be paid on installments.

The sale of this stock will supply \$18,000,000.00, which added to the \$7,000,000 received from the sale of Class B stock will make the total of \$25,000,000.00 necessary to pay for the stock authorized to be purchased. In the interval between the time we must make payment for the General Motors and Chevrolet Motor stocks purchased and the time we will receive payment for the Class A stock sold to stockholders, the Du Pont Motors Company will arrange to borrow the balance of money needed. It is estimated that at least \$8,000,000.00 of such borrowings can be made through giving notes in part payment for General Motors and Chevrolet Motor stocks purchased, leaving the balance to be ar-

ranged for through banks or otherwise as in the judgment of the Finance Committee may seem best.

While the writer feels that a great many of our stockholders would pay in full immediately for the Class A stock to which they will be entitled to subscribe under this plan, using the Liberty Bonds which they will receive as a 32-percent special dividend on the 22nd instant, it may be advisable to consider the matter of paying any extra dividend to be paid in 1918 quarterly instead of at the end of the year thus making it possible for the stockholders to use this dividend to meet their Class A stock payments as they become due. Should, for instance, we adopt the policy of declaring an extra dividend of 32 percent in 1918, payable 8 percent quarterly, our estimated cash position at the end of each quarter as shown by a revision of the cash forecast accompanying my report to the Finance Committee under date of November 19th would show as follows:

March 31st, 1918.....	\$15, 871, 000. 00
June 30th, 1918.....	—425, 000. 00
September 30th, 1918.....	15, 572, 000. 00
December 31st, 1918.....	33, 758, 000. 00

This cash position will be improved through cash advances to be received from the United States Government under our contracts with them, which advances we conservatively estimate will amount to \$25,000,000.00. The suggestion contained in this paragraph is not at all pertinent to the plan but is merely injected as a matter which may well receive careful consideration by the members of the Finance Committee between now and the time the offering of Class A stock is made to our stockholders should the recommendations contained herein be approved.

NECESSITY FOR FINDING INVESTMENTS

In the latter part of 1915 the Directors of the Du Pont Company deemed it wise to increase the capital and surplus employed from approximately \$60,000,000.00 to a capital of \$120,000,000.00. In the opinion of the writer our Company, with \$60,000,000.00 of debenture stock and \$60,000,000.00 of common stock, aggregating a total \$120,000,000.00 stock outstanding, should carry a surplus of at least \$30,000,000.00. If this is true, our Company is definitely committed to the policy of employing a total of \$150,000,000.00 capital. Of this amount \$60,000,000.00 was employed in 1915, leaving a balance of \$90,000,000.00 as representing the minimum amount which we are committed to find investment for. To this \$90,000,000.00 should be added the value of plant and working capital assets employed in the military powder business prior to the war, for the reason that present indications are that this investment will be unprofitable and valueless after the war due to the Government owning more than ample capacity to supply its needs in time of peace. The total amount we have succeeded in investing in new industries to date, counting \$12,500,000.00 for the dye business (\$7,500,000.00 for plant investment and \$5,000,000.00 for working capital investment) is \$40,000,000.00, leaving a balance of \$50,000,000.00 still seeking employment and it is imperative that this amount be employed, otherwise the earnings of our Company after the war will be insufficient to support the dividend policy and the matter of properly employing this money in a way that will result in proper return to our Company is one of most serious consequence.

The recommendation to make an investment in the motor industry may come as quite a shock to many of our directors at first, due to lack of full understanding of the opportunity offered and its relation to other opportunities that may present themselves from time to time.

HISTORY AND NATURE OF THIS INVESTMENT

The General Motors Company was organized in 1908 by Mr. W. C. Durant. It was then a holding company and acquired control, through stock ownership, of the Buick, Cadillac, Oldsmobile, Oakland Motor Companies, Northway Motors Company, Weston Mott Company and fifteen other companies, since which time the General Motors Company has become an operating company and most all the subsidiaries have been dissolved. In 1910 Mr. Durant found himself with properties, which, while they were earning \$10,000,000.00, were woefully short of working capital and it became necessary to borrow \$15,000,000.00. This was a difficult task due to the motor industry being an infant industry and more or less discredited. The result was that in order to get the money necessary he had to create a five-year voting trust under the laws of New York, under which

the bankers agreed to loan \$15,000,000.00 for five years with the understanding that they would have control of the Board of Directors. During the first ten months' operation by the Bankers the net earnings applicable to the common stock of General Motors Company dropped to \$2,474,000.00 and for the following four years the record shows net earnings applicable to common stock as follows:

1912 -----	\$2, 856, 000. 00
1913 -----	6, 410, 000. 00
1914 -----	6, 201, 000. 00
1915 -----	13, 409, 000. 00

The voting trust agreement expired in 1915 and the bankers and Mr. Durant were in dispute as to who was then in control of the stock. The dispute resulted in a compromise under which Mr. Durant elected seven directors, the bankers elected seven director and Messrs. J. A. Haskell, Lamot Belin, and John J. Raskob were agreed upon as three neutral directors satisfactory to both sides. Time soon demonstrated that Mr. Durant was actually in control of affairs through stock ownership; he was elected President of the Company and the earnings applicable for the common stock for the following year (1916) jumped to \$27,740,000.00 and for 1917, after making deductions for war taxes, \$27,704,000.00. The automobile year starts August 1st and the earnings for 1918 were estimated at \$45,000,000.00 before deducting war taxes. The actual earnings for the first four months (which is the worst period in the automobile industry) before deducting war taxes were over \$17,000,000.00, the earnings for the month of November alone being upwards of \$5,000,000.00 which is the largest month in the history of the Company. The following statement comparing conditions for the first three months this year with the same period last year is of interest.

	3 months ended 10/31/1917	3 months ended 10/31/1916
Cars and Trucks sold.....	54, 432	37, 884
Net Sales.....	\$53, 668, 000	\$34, 520, 378
Net Earnings.....	19, 700, 000	6, 695, 733

† This amount is after deducting \$2,500,000.00 for war taxes.

The cash in banks and in sight drafts with documents attached, at the close of business December 7, 1917, amounted to \$24,103,700.00.

CHEVROLET MOTOR COMPANY

While Mr. Durant was a member of the Board of Directors and Vice President of the General Motors Company during the bankers' regime, he was not at all active and incorporated the Chevrolet Motor Company for the purpose of manufacturing the Chevrolet car which has become very popular and fills a need not covered by the cars of the General Motors Company. The Chevrolet Motor Company had a capital of approximately \$20,000,000.00 and in 1916 increased its capital to upwards of \$64,000,000.00 and acquired control of the General Motors Company, in which Company it now owns 450,000 shares of common stock out of 825,000 shares outstanding.

Balance sheets of both the General Motors Company and Chevrolet Motor Company are appended to this report.

GENERAL

The growth of the motor business, particularly the General Motors Company, has been phenomenal as indicated by its net earnings and by the fact that the gross receipts of the General Motors-Chevrolet Motor Companies [sic] for the coming year will amount to between \$350,000,000.00 and \$400,000,000.00. The General Motors Company today occupies a unique position in the automobile industry and in the opinion of the writer with proper management will show results in the future second to none in any American industry. Mr. Durant perhaps realizes this more fully than anyone else and is very desirous of having an organization as perfect as possible to handle this wonderful business. Mr.

Barksdale is a director of the Chevrolet Motor Company and Mr. P. S. du Pont a director and Chairman of the Board of Directors of the General Motors Company. Mr. Durant's association with Mr. P. S. du Pont, Mr. H. M. Barksdale, Mr. J. A. Haskell, Mr. Lammot Belin and the writer has been such as to result in the expression of the desire on his part to have us more substantially interested with him, thus enabling us to assist him, particularly in an executive and financial way, in the direction of this huge business. The evolution of the discussion of this problem is that an attractive investment is afforded in what I consider the most promising industry in the United States; a country which in my opinion holds greater possibilities for development in the immediate future than any country in the world; that rather than have a coterie of our directors taking advantage of this in a personal way, thus diverting their time and attention (to some degree at least) from our affairs, it would be far preferable for the Company to accept the opportunity afforded, thus giving our directors the interest so desired through their stock ownership in the Du Pont Company.

GENERAL MOTORS-CHEVROLET MOTOR CONSOLIDATION

The Chevrolet car meets a demand which the General Motors Company cannot supply and in addition the Chevrolet-Durant interests dominate the United Motors Company though they do not control through stock ownership. This is a very valuable good will asset to the Chevrolet and General Motors Companies. It is, therefore, proposed (although the plan has not been put before the Directors and stockholders of the respective companies) that the General Motors Company purchase the entire assets of the Chevrolet Motor Company except the 450,000 shares of General Motors Company common stock in the Chevrolet Motor Company treasury and assume the entire liabilities of the Chevrolet Motor Company paying therefor approximately 318,000 shares (\$31,800,000.00) common stock General Motors Company. This 318,000 shares together with the 450,000 shares in the Chevrolet treasury aggregating 768,000 shares of General Motors Company common stock will be the sole asset of the Chevrolet Motor Company, which will then be dissolved and in dissolution each share of Chevrolet will receive 1.2 shares of General Motors common stock. While, as previously stated, this plan has not been placed before the Board of Directors and stockholders, Mr. Durant is confident that there will be no trouble in its consummation.

STOCK AVAILABLE FOR ACQUISITION

The writer took up with the Finance Committee in an informal way the matter of investment in these stocks and as the proposal as roughly presented at that time seemed to be of sufficient interest to warrant further development we arranged with Mr. Durant to secure as many options as possible on stock, with the result that if we succeed in purchasing in the open market 40,000 shares of Chevrolet at an average price of \$108.00 per share and 13,340 shares of General Motors at an average price of \$90.00 per share we will have a total equivalent to 223,400 shares in the enlarged General Motors Company at a cost (after deducting 2 percent dividend accrued January 1st, 1918) of \$90.50 per share.

The total outstanding voting stock of the enlarged General Motors Company would be approximately 1,080,000 shares, 50 percent or control of which would require ownership of 540,000 shares. With the above purchases, control could be summarized as follows:

	<i>Shares</i>
Durant-----	280,000
Du Pont-----	223,000
Total-----	503,000
Additional stock to be bought by Du Pont to make our investment	
\$25,000,000.00, say-----	50,000
Subtotal-----	553,000
Stock held by Wilmington people and Du Pont friends approximately--	100,000
Total-----	653,000

RETURN ON INVESTMENT

If the earnings of General Motors Company for 1918 continue at the present rate they will aggregate.....	\$53, 000, 000. 00
Estimated earnings for the Chevrolet Company will aggregate, say	12, 000, 000. 00
making total net earnings for the enlarged General Motors Company before deducting war taxes.....	65, 000, 000. 00
Assuming that the war taxes will aggregate.....	20, 000, 000. 00
the net earnings of the consolidated company after paying war taxes would be.....	45, 000, 000. 00
Deduct preferred stock dividend.....	1, 200, 000. 00
Balance.....	\$43, 800, 000. 00
which equals 40 percent on \$108,000,000.00 General Motors Company common stock then outstanding.	

If the Du Pont Company succeed in investing \$25,000,000.00 in the enlarged General Motors Company common stock at \$95.00 per share, we will acquire a total of 263,200 shares, paying 12 percent in dividends and on which there will be earnings of 40 percent as hereinbefore indicated and the income account of the Du Pont Motors Company could be stated as follows :

	Dividends	Share of General Motors Earnings
263,200 shares General Motors stock at 12 percent-40 percent.....	\$3, 158, 400	\$10, 528, 000
Less: 12 percent dividends on \$18,000,000.00 Class A Stock.....	2, 160, 000	2, 160, 000
Balance equals 14 1/4 percent on \$7,000,000.00 Class B Stock held in Treasury of Du Pont Company.....	\$998, 400	-----
Balance equals 119 1/4 percent on \$7,000,000.00 Class B Stock held in Treasury of Du Pont Company.....	-----	\$8, 368, 000

The dividends of \$3,158,400.00 are equal to a return of 12.6 percent on a total investment of \$25,000,000.00 and the share of General Motors earnings of \$10,528,000.00 is equal to 42 percent on the \$25,000,000.00 investment.

VALUE OF ASSETS PURCHASED COMPARED WITH PURCHASE PRICE

A determination of the actual value of the assets back of the common stock we are purchasing is interesting and may be stated as follows :

	Current Assets	Fixed Assets
Real Estate and Equipment.....	-----	\$36, 941, 331. 67
Investment Securities.....	-----	8, 579, 223. 15
Current and Working Capital.....	\$93, 253, 584. 79	-----
Deferred Charges.....	1, 051, 106. 76	-----
Total.....	\$94, 304, 691. 55	\$45, 520, 554. 82
Deduct:		
Current Liabilities.....	19, 164, 583. 96	-----
Preferred and Subsidiary Stocks.....	-----	21, 031, 010. 50
Balance.....	\$75, 140, 107. 59	\$24, 489, 544. 32
which is equal to (?) percent on \$108,000,000 common stock valued at \$95.00 per share (percent).....	73	24
If we add the net earnings to December 31, 1918, after paying 12 percent dividend.....	35, 000, 000. 00	-----
we have a total of.....	\$110, 140, 107. 59	\$24, 489, 544. 32
which is equal to (?) on \$108,000,000 common stock value at \$95.00 per share (percent).....	108	24

In other words, valuing the good will of the Company at nothing and assuming the preferred stock is a charge against the fixed investment, we are in pur-

chasing stock at \$95.00 per share securing an investment in which 73 percent of the purchase price is represented by current assets and 24 percent in fixed investment, making a total of 97 percent. If we add to the current assets a conservative estimate of the earnings that will be injected into the business during the twelve months ending December 31, 1918, the current assets will equal 108 percent of the cost of our investment, the fixed assets 24 percent, or a total of 132 percent. The good will of the Company valued at \$30,482,771.17 as shown on the balance sheet adds 30 percent to the value of our investment as represented by the purchase price. In the opinion of the writer the good will of this industry is conservatively estimated at \$30,000,000.00 and the value of the fixed investment is worth very much more than figures (\$36,941,331.67) shown on the balance sheet.

SUMMARY

Summarizing the above we have an opportunity to make a substantial investment in the motor industry with the following points in favor thereof:

1. With Mr. Durant we will have joint control of the companies.
2. We are immediately to assume charge and be responsible for the financial operation of the Company. This involves the direction of cash balances which will aggregate upwards of \$25,000,000.00 and the handling of annual gross receipts aggregating \$350,000,000.00 to \$400,000,000.00. From a financial standpoint, I feel that a consolidation of the financial divisions of the Du Pont and General Motors Companies will be of tremendous advantage to us as well as to the General Motors Company and is a thing to be sought and desired from our standpoint.
3. The Du Pont Company, if the Class A stock is sold to the stockholders, will share in the profits of the industry to an extent equal to 120 percent on our investment and will receive 14 percent in annual dividends thereon; or in the event of carrying Class A stock in our Treasury the dividend rate will be about 12.6 percent and will share in the earnings about 42 percent and this after paying \$20,000,000.00 war taxes.
4. Our purchase is on better than an asset basis.
5. Our interest in the General Motors Company will undoubtedly secure for us the entire Fabrikoid, Pyralin, paint and varnish business of those companies, which is a substantial factor.

MANAGEMENT

Perhaps it is not made clear that the directorates of the motor companies will be chosen by Du Pont and Durant. Mr. Durant should be continued as President of the Company, Mr. P. S. du Pont will be continued as Chairman of the Board, the Finance Committee will be ours and we will have such representation on the Executive Committee as we desire, and it is the writer's belief that ultimately the Du Pont Company will absolutely control and dominate the whole General Motors situation with the entire approval of Mr. Durant, who, I think, will eventually place his holdings with us taking his payment therefor in some securities mutually satisfactory.

During the past two years our Company has been doing big things. After the war it seems to me it will be absolutely impossible for us to drop back to being a little company again and to prevent that we must look for opportunities, know them when we see them, and act with courage. If our fundamentals are sound, as they certainly seem to be in this case, the control of the General Motors Company will be a task worthy of the best there is in us and will, I feel, afford many opportunities to keep our important men occupied with big things after the war.

Stop.

NOTE.—"Finance Committee, Secy's No. 9849" stamped at top of first page of document. "Return to Executive Committee Room 9069" stamped twice at bottom of first page and once each at bottom of the second, third, and fourth pages. Italics indicate pencil notations.

Du Pont control

M. Sexton.....	600	C. F. Ricta.....	50
John Aspinwall.....	500	Geo. P. Bissell.....	300
H. M. Parksdale.....	2250	R. P. Brewer.....	35
F. L. Belin.....	650	E. C. Britton.....	40
H. Belin, Jr.....	250	L. H. Broadwater.....	200

Du Pont control—Continued

Leon O. Bryan	45	R. O. Hull	200
Daniel Buckley	50	James H. Kane	75
E. G. Buckner	290	Frederick Kniffen	430
Susy W. Buckner	15	C. C. Kurtz	500
M. duP. Carpenter	150	Fred. W. Kurtz	36
R. R. M. Carpenter	200	Howard C. Kurtz	9
C. Copeland	550	F. D. Lackey	3181
Henry Davis	75	J. P. Laffey	100
Ralph Derr	109	Philp D. Laird	160
John T. Devine	155	Walter J. Laird	50
Wm. M. Dole	1800	W. W. Laird	200
B. J. Doherry	50	R. A. Mc Adam	10
A. Rae du Bell	45	Lucy McDewitt	25
L. L. Dunham	6218	Frank A. McHugh	175
Marion Dunham	22	L. L. Maloney	110
R. H. Dunham	200	S. Frances Martin	5
A. Felix du Pont	75	David T. Mareel	90
Ethel H. du Pont	500	Charles H. Mason	25
Eugene du Pont	100	Holladay S. Meeds	60
E. E. du Pont	600	Catherine D. Miller	10
H. A. du Pont	1610	J. A. Montgomery	255
H. F. du Pont	650	Bessie D. Moore	10
Irene du Pont	1300	M. D. Murphy	125
Lammot du Pont	1500	J. B. Niles	600
P. S. du Pont	20000	C. L. Petze	300
T. C. du Pont	15375	Frank W. Pierson	95
J. B. D. Edge	100	A. F. Porter	10
R. W. Ellis	22	J. F. Porter	10
Van Horn Ely	200	Anna E. Quigley	5
M. Farquhar	100	Elizabeth B. Quigley	5
E. C. Ferriday	200	Helena S. Raskob	1100
Frank L. Garey	38	John J. Raskob	6965
Fred Gerner	151	Wm. F. Raskob	250
J. C. Gibson	200	C. A. Rudolph	75
Glenden Land Co.	700	George W. Sparks	100
Harry T. Graham	365	L. W. Stout	235
Willie T. Harrington	70	G. B. Street	200
Margaret Jane Harrington	48	C. H. Ten Weeges	200
Helen Martha Harrington	15	Rodney Thayer	100
Lekoy Harvey	50	Victor Thomas	10
H. Haskell	200	L. Scott Townsend	235
J. A. Haskell	350	S. D. Townsend	100
Everett M. Hawley	100	Wilmington Trust Co., Trustee	700
Gertrude Swift Hawley	150	J. R. Winner	30
Harvey Hayward	250		
William S. Hilles	50	F. G. Tallman	78334
C. B. Holladay	1400		1000
H. W. Hull	50		79334

*Chevrolet Motor Company combined and condensed balance sheet as at
September 30, 1917*

ASSETS

Fixed (Schedule A-1) :

Real Estate, Plant, and Equipment	\$6, 628, 771. 18
Less Reserve for Depreciation	601, 676. 79

\$6, 027, 094. 39

Investment Securities (A-2) :

Stock—Affiliated Companies	461, 000. 00
Stock—Other Companies	50, 427, 900. 00
Liberty Bonds	2, 000. 00

50, 890, 900. 00

*Chevrolet Motor Company combined and condensed balance sheet as at
September 30, 1917—Continued*

Current and Working:

Cash (A-3)-----	\$2, 669, 769. 13	
Drafts outstanding against B/L (A-4)-----	1, 689, 735. 28	
Notes and Accounts Receivable (A-4)-----	\$1, 427, 598. 24	
Less Reserve for Bad and Doubtful Accounts-----	46, 377. 64	
	<hr/>	1, 381, 220. 60
Accounts with Affiliated Companies (A-4)---	2, 099, 001. 61	
Inventories (A-5)-----	\$10, 530, 795. 47	
Less Reserve for Depreciation-----	279, 742. 83	10, 251, 052. 64
	<hr/>	\$18, 090, 779. 26
Deferred Charges (A-6)-----		370, 654. 51
Goodwill -----		11, 953, 099. 28
		<hr/>
		87, 332, 527. 42

LIABILITIES**Current Liabilities:**

Notes and Accounts Payable (Schedule A-7) -----	\$1, 605, 827. 39	
Dealers and Customers Deposits (A-7)-----	459, 775. 95	
Accrued Items (A-8)-----	521, 583. 22	
Accounts with Affiliated Co.'s (A-7)-----	96, 788. 02	
	<hr/>	2, 683, 974. 58
Capital Stock (Authorized \$80,000,000.00)-----	64, 250, 000. 00	
Less in Treasury-----	245, 200. 00	
		\$64, 004, 800. 00
Surplus (A-9):		
Balance—December 31, 1916 -----	\$31, 123, 274. 48	
Less Adjustments-----	15, 401, 968. 07	
	<hr/>	15, 721, 306. 41
Current Additions (B-1)-----	8, 398, 802. 51	
	<hr/>	24, 120, 108. 92
Less Dividends Paid-----	3, 840, 288. 00	
	<hr/>	20, 279, 820. 92
Reserves (A-10)-----		363, 931. 92
		<hr/>
		87, 332, 527. 42

NOTE.—“Return to Executive Committee Room 9069” stamped at bottom of page.

*Balance sheet, General Motors Company after Chevrolet consolidation
(estimated)*

ASSETS

Real Estate, Plant, and Equipment-----	\$45, 208, 779. 68	
Less Depreciation and Reserve-----	8, 267, 448. 01	
	<hr/>	\$36, 941, 331. 67
Investment Securities-----		8, 579, 223. 15
Current and Working Capital (After reserving \$2,742,101.16 for Material and Supply depreciation)-----		93, 253, 584. 79
Deferred Charges-----		1, 051, 106. 76
Goodwill -----		30, 482, 771. 17
	<hr/>	<hr/>
Total-----		\$170, 308, 017. 54

*Balance sheet, General Motors Company after Chevrolet consolidation
(estimated)—Continued*

LIABILITIES

Current Liabilities-----	\$19, 164, 583. 96
Portion of Subsidiary Stocks not owned by General Motors Company-----	1, 366, 310. 50
Preferred Stock outstanding-----	19, 664, 700. 00
Common Stock outstanding (estimated)-----	108, 000, 000. 00
Surplus-----	16, 515, 904. 25
Reserves-----	5, 506, 518. 83
Total -----	\$170, 308, 017. 54

Condensed consolidated balance sheet of General Motors Corporation and subsidiary companies directly connected with the manufacture of motor cars and parts as of September 30th, 1917

ASSETS

Fixed Assets: Real Estate, Plants, and Equip- ment-----	\$38, 580, 008. 50	
Less: Reserve for Depreciation-----	7, 665, 771. 22	
		\$30, 914, 237. 28
Patents, Agreements, Etc.-----		298, 100. 00
Miscellaneous Investments-----		2, 688, 323. 15
Current and Working Assets:		
Cash in banks and on hand-----	\$16, 405, 864. 04	
Marketable securities and stocks of mu- nicipalities and corporations-----	286, 000. 00	
Notes (\$443,227.91 in 1917) and accounts receivable-----	12, 359, 437. 12	
Inventories at cost or less-----	46, 111, 504. 37	
		75, 162, 805. 53
Deferred Expenses-----		680, 452. 25
Good Will-----		18, 231, 571. 91
Total -----		\$127, 975, 490. 12

LIABILITIES

Capital Stock:		
Pfd. Stock (Auth. \$20,000,000) issued-----		\$19, 664, 700. 00
Com. Stock (Auth. \$82,600,000) issued----	\$82, 558, 800. 00	
Less: In treasury of General Motors Corp-----	\$4, 685, 500. 00	
		77, 873, 300. 00
Total in hands of public -----		\$97, 538, 000. 00
Outstanding Capital Stock (par value) and surplus of subsidiary companies, being the portion not owned by General Motors Corpo- ration:		
Capital Stock-----	\$540, 500. 00	
Surplus-----	825, 810. 50	
		1, 366, 310. 50
Current Liabilities:		
Accounts Payable-----	13, 399, 808. 74	
Taxes, Pay Rolls, and Sundries accrued not due-----	3, 080, 800. 64	
		16, 480, 609. 38
Reserves:		
For two months' proportion of Dividend on Pfd. Stock payable Nov. 1-----	198, 647. 00	
For War Income and Excess Profits Tax--	4, 556, 872. 20	
For Sundry Contingencies-----	479, 067. 71	
		5, 232, 586. 91
Surplus-----		7, 357, 983. 33
Total -----		\$127, 975, 490. 12

Mr. HARRIS. Then this document, committee exhibit 2, is a report again from Raskob to the finance committee, and that would be his finance committee, the Du Pont Co. He summarizes the conditions surrounding the acquisition of this interest.

Ninety-seven thousand eight hundred and seventy-five shares of common stock of General Motors and 133,690 shares of Chevrolet were acquired at the total net cost of \$25,183,758.64. Most of the money was obtained some from Liberty Loan, from the Du Pont Co., by the way, either its own company or its securities company, which was a company-owned corporation. Another of the subsidiaries gave notes for \$3 million, and then at the bottom, fourteen-million-odd was advanced by the company.

Senator O'MAHONEY. What is the General Industries, Inc.?

Mr. HARRIS. That is one of their subsidiary companies through which they were doing some financing.

Senator O'MAHONEY. By the word "their," whom do you mean?

Mr. HARRIS. Du Pont; I am sorry.

Senator O'MAHONEY. General Industries, Inc., was a Du Pont corporation?

Mr. HARRIS. Yes, sir; and I think it was created, as I recall, for the purpose of buying stock. It changed its name later. It became, I think, Du Pont Securities Co.

Senator O'MAHONEY. Mr. Raskob's statement in this report of March 8, 1918, is therefore that the purchase at the total net cost of \$25,183,758.64 was temporarily financed for account of General Industries, Inc.?

Mr. HARRIS. And for the company.

Senator O'MAHONEY. Well, this is what he says, "in the following manner."

Mr. HARRIS. Yes.

Senator O'MAHONEY. The purchase, that is, the purchase recommended by Raskob to Du Pont.

Mr. HARRIS. That's right, sir.

Senator O'MAHONEY. Was temporarily financed for account of General Industries, Inc., in the following manner.

Mr. HARRIS. That's right.

Senator O'MAHONEY. Do any of the exhibits show what the permanent financing was?

Mr. HARRIS. Yes; further on you will see the permanent financing. Then Raskob reports at the bottom of the page that the directors of General Motors, at a meeting of the directors, it was agreed to make an offer to purchase the assets of Chevrolet exclusive of the General Motors Corp. common stock, and the price he says to be paid—

will result in Chevrolet, after disposing of its assets, having General Motors Corp. stock in its treasury equivalent to $1\frac{1}{4}$ share for each share of its own outstanding stock.

Going further down the page, Raskob reports that their acquisitions resulting in an equivalent to General Motors stock and Chevrolet stock amounted to a purchase equivalent to 250,663 shares of the enlarged corporation out of a total of 1,047,417:

This means that we have acquired a 23.83-percent interest in the common stock of the enlarged General Motors Corp.

I might say, Senator, that that 23.83 was a basic interest that hardly changed from the time of the initial investment until the trial in Chicago.

Senator O'MAHONEY. Now, this, I take it, was in addition to the holdings that Durant had and Du Pont had?

Mr. HARRIS. Well, Du Pont—

Senator O'MAHONEY. Previously.

Mr. HARRIS. The holding was quite small. Pierre and Irénée had holdings at the time. At the time that Pierre went into General Motors, at the request of the bankers, he was holding about 2,000 shares. In the next couple of years he increased that and spent a little over \$1 million in what might be personal investments.

Mr. McHUGH. Mr. Harris, the Du Pont Corp. itself then had no actual stock interest in General Motors before it acquired this 23.83 percent interest?

Mr. HARRIS. I think not.

Mr. McHUGH. Was some other interest then held by various members of the Du Pont family?

Mr. HARRIS. That's right, the two of them, Pierre and Irénée, two brothers. In calling the Senator's attention to the last page—

Notes of interest with respect to General Motors Corp.—

do you have it, sir?

Senator O'MAHONEY. Yes; I have it.

Mr. HARRIS (reading):

Notes of interest with respect to General Motors Corp.: The board of directors of General Motors Corp. has been increased to include as new members Messrs. H. F. du Pont, Irénée du Pont, so that now of a total number on the board we have a membership of five, as follows: Messrs. P. S. du Pont, Irénée du Pont, H. F. du Pont, J. A. Haskell, J. J. Raskob.

The finance committee has been altered to embrace the following members: Messrs. H. F. du Pont, Irénée du Pont, W. C. Durant, J. A. Haskell, J. J. Raskob, chairman.

The executive committee had one Du Pont man on it, J. A. Haskell. Are there further questions?

Senator O'MAHONEY. On the page following that, on which the membership on the board of directors by Du Pont family members and Du Pont Co. executives appears, membership of the finance committee and of the executive committee, I find two marked paragraphs.

Mr. HARRIS. Which are:

The financial management of General Motors Corp. is thrown very largely up to us and plans are under way to bring us into intimate contact with that end of the business.

Through our connection on the executive committee, we will be in close contact with the operating and sales end of the business.

And then there was a dinner given to the bankers.

Senator O'MAHONEY. Is that all they got?

Mr. HARRIS. No; it was not all, sir.

Mr. McHUGH. Mr. Harris, were the Du Pont interests instrumental in bringing other capital into the General Motors Corp.?

Mr. HARRIS. Yes; they were.

Mr. McHUGH. Do you have any other documents which would tend to explain how or under what circumstances that was done?

Mr. HARRIS. I have before me committee exhibit 3.

Senator O'MAHONEY. Before you go on to that, I observe with interest your previous exhibit, committee exhibit No. 2, a page and a quarter

entitled "Extract From Moody's Investors Service of March 7, 1918."

I cite this because it is an analysis of Moody's Investors Service of the after-war production of the Du Pont Powder Co.

Mr. HARRIS. Yes, sir.

Senator O'MAHONEY. The second paragraph reads as follows:

Hence it is said that the Du Pont Co. has undertaken the manufacture and sale of fabrikoid, pyralin, lacquers, solvents, and other chemicals. The company has bought during the year the varnish and paint business of Harrison Bros. & Co., the Beckton Chemical Co., Cauley, Clark & Co., and the Bridgeport Wood Finishing Co. It has also purchased nitrate lands in Chile to enable it to produce all of its own nitrates. Meantime its stock earned \$77.49 per share in 1917, against \$133.31 in 1916; and its gross sales were \$269,842,456, as compared with \$318,845,685.

In other words, if Moody's statement is correct, the Du Pont Co. was in itself a broad-scale merger of the paint, fabrikoid, lacquer, solvents, and other businesses with the broad-scale merger which had previously taken place under the direction of Durant in the automotive industry.

Mr. HARRIS. We called them acquisitions.

Senator O'MAHONEY. Call them what you please; there were two big mergers coming together in a still larger merger.

Mr. HARRIS. And in point of time, Senator, it was very appropriate because Du Pont was getting ready, as we charged, to take over a large market in the automotive field.

Senator O'MAHONEY. Please avoid referring to what you charged. I just want to get these facts in.

Mr. HARRIS. I will try and keep that out of it.

(Committee's exhibit 2 previously referred to is as follows:)

(Government Exhibit 128. In the District Court of the United States, Northern District of Illinois, Eastern Division. Before La Buy, J. Harry A. Harnden, Official Court Reporter)

MARCH 8, 1918.

To: Finance Committee.

From: Treasurer.

I beg to summarize the conditions surrounding our acquisition of an interest in the General Motors Corporation and Chevrolet Motor Company, in accordance with authority granted.

97,875 shares of Common Stock of General Motors Corporation and 133,690 shares of stock of Chevrolet Motor Company have been acquired at a total net cost of \$25,183,758.64.

The purchase was temporarily financed for account of General Industries, Inc., in the following manner:

Liberty Loan Bonds borrowed from duPont Securities Company at par-----	\$5, 856, 000. 00
Liberty Loan Bonds borrowed from E. I. du Pont de Nemours & Company at par-----	1, 384, 000. 00
Notes of General Industries, Inc., dated January 8, 1918, maturing September 1, 1918, given Messrs. Hofheimer and Durant, in payment for stock acquired from them-----	3, 000, 000. 00
Cash advanced by E. I. du Pont de Nemours & Co., handled through special account styled "Finance Committee":	
Aggregate amount charged to "Finance Committee"-----	\$16, 144, 293. 43
Less repayments credited to "Finance Committee"-----	1, 200, 534. 79
Net Cash advanced-----	14, 943, 758. 64
	<hr/> \$25, 183, 758. 64

At a meeting of the Board of Directors of the General Motors Corporation February 21, 1918, it was agreed to make an offer to purchase the assets of Chevrolet Motor Company exclusive of General Motors Corporation Common Stock which that company owns. The price to be paid will result in the Chevrolet Motor Company after disposing of its manufacturing assets having General Motors Corporation stock in its treasury equivalent to one and one-seventh shares for each share of its outstanding stock. In this way 133,690 shares of Chevrolet Motor Company is equal to 152,788 shares of General Motors Corporation Common Stock which, added to the General Motors Corporation stock acquired as above aggregating 97,875 shares. Resulting in our owning a total equivalent to 250,663 shares of the enlarged General Motors Corporation out of a total which that Corporation will have outstanding of 1,047,417 shares.

This means that we have acquired a 23.83 percent interest in the Common Stock of the enlarged General Motors Corporation. The authority granted was to invest \$25,000,000.00 in General Motors Corporation Common Stock at par on the assumption that the exchange rate of Chevrolet Motor Company stock would be on a basis of 1.2 shares of General Motors Corporation Common Stock for each share of Chevrolet Motor Company stock.

The exchange rate of 1.2 shares would have resulted in the enlarged General Motors Corporation having approximately 1,080,000 shares of common stock outstanding and an investment of \$25,000,000.00 in the stock at par would have represented a 23.14 percent interest. A 23.83 percent interest in the stock par would, in that event, have cost \$25,736,000.00. As it is we have a 23.83 percent interest at a cost of \$25,183,758.64.

In line with authority granted, the General Industries, Inc., was formed with an authorized capital of \$25,000,000.00, all one class of stock. E. I. du Pont de Nemours & Company subscribed to the whole of this authorized capital and has paid in on call of the Board of Directors of General Industries, Inc., 5 percent or \$1,250,000.00. All of the stock of General Motors Corporation and Chevrolet Motor Company acquired, as set forth above has been bought and paid for by General Industries, Inc., so that the books of E. I. du Pont de Nemours & Company will show an investment in the stock of General Industries, Inc., of \$1,250,000.00, and no investment in the motor companies.

General Industries, Inc., has financed the acquisition of the motor stocks out of proceeds received from the amount paid on its issued stock and from the sale of approximately \$24,000,000.00 of notes. Following is an Assets and Liabilities statement of General Industries, Inc., as of February 28, 1918, after consummating the transaction.

ASSETS	
Cash-----	\$36,656.91
97,875 shares General Motors Corporation Common Stock-----	11,476,006.73
133,690 shares Chevrolet Motor Company stock-----	13,707,751.91
Expenses to date (See Detail)-----	89,811.65
Total Assets-----	\$25,310,227.20
LIABILITIES	
Capital Stock, authorized and issues, \$25,000,000; 5 percent paid in-----	\$1,250,000.00
Bills Payable:	
W. C. Durant-----	\$1,200,000.00
N. Hofheimer, et al-----	1,800,000.00
New York Banks-----	15,000,000.00
duPont Securities Company-----	5,856,000.00
	23,856,000.00
Accounts Payable (E. I. duPont de Nemours & Co.)-----	204,227.20
Total Liabilities-----	25,310,227.20
Detail of expenses:	
Income:	
Interest on Bank Balances-----	815.20
Expenses:	
Interest on Accounts Payable-----	\$84,466.66
Expense-----	104.00
Internal Revenue Tax-----	4,587.20
Organization Expense-----	1,468.99
	90,626.85
	89,811.65

The notes issued by General Industries, Inc., are secured partly by General Motors Corporation and Chevrolet Motor Company stocks and partly by United States Government securities. A detail of the collateral put up will be found in the statement annexed to this report. The United States Government securities put up as collateral were loaned to the General Industries, Inc., by E. I. duPont de Nemours & Company under authority granted by your committee.

Notes of interest with respect to General Motors Corporation

The Board of Directors of General Motors Corporation has been increased to include as new members: Messrs. H. F. duPont, Irene duPont, so that now of a total number of 15 on the Board, we have a membership of five, as follows: Messrs. P. S. duPont, Irene duPont, H. F. duPont, J. A. Haskell, J. J. Raskob.

The Finance Committee has been altered to embrace the following members: Messrs. H. F. duPont, Irénée duPont, W. C. Durant, J. A. Haskell, J. J. Raskob, Chairman.

The Executive Committee now has the following members: Messrs. W. P. Chrysler, R. H. Collins, W. L. Day, J. A. Haskell, E. ver Linden, F. W. Warner, W. C. Durant, Chairman.

Mr. H. M. Barksdale, who is now on the Board of Chevrolet Motor Company, will be placed on the Board of the General Motors Corporation as soon as the former company is wound up, and upon his taking the place on the Board he will be made a member of the Finance Committee and Executive Committee.

The financial management of General Motors Corporation is thrown very largely up to us, and plans are under way to bring us into intimate contact with that end of the business.

Through our connection on the Executive Committee we will be in close contact with the operating and sales end of the business.

In order to make our position in the motor company known in the banking world, Mr. P. S. duPont arranged a dinner in New York on the night of February 21, 1918, at which were present Mr. W. C. Durant and members of our Finance Committee and other members of our Board who may take an active hand in forming the policies of the General Motors Corporation, and to which were invited the heads of our principal New York and Philadelphia banks. At this dinner Mr. P. S. duPont formally announced our entry into the motor business and Mr. Durant took the opportunity to describe that business in a comprehensive way, and there is no doubt but that the dinner resulted in the General Motors Corporation becoming better established in the minds of important bankers of the country.

As a matter of general interest, I am attaching an extract from the latest weekly letter of Moody's Investors Service wherein he comments on what he chooses to call duPont's forethought in providing for "other businesses to take the place later on of its war business." These comments are undoubtedly inspired by the news of our having entered the automobile industry, and while John Moody's thoughts on the subject may not be contrasted with our own views after deliberate consideration, nevertheless his comments are flattering and may be of passing interest to the Directors.

/s/ J. J. RASKOB.

FDB/GLN

NOTE.—"Received Mar. 11, 1918, M. D. F." and "Finance Committee, Secy's No. 10267" stamped at top of first page of document. "Return to Executive Committee, Room 9069" stamped at bottom.

EXTRACT FROM MOODY'S INVESTORS SERVICE OF MARCH 7, 1918.

"After-War Production: The du Pont Powder Co. is exercising forethought in providing something for its plants to do after the war is over. This contrasts rather brilliantly with the managements of a great many munition and other companies whose personnel is so puffed up with success as to blindly imagine that its good luck will hold, and that in some way plenty of business can be found for the plants and factories to turn out. The fact that the war consumption is absorbing about 20,000,000 tons of our steel per annum and 325,000 metric tons of our copper does not strike some people as being of any importance; but the du Ponts appreciate what these things mean. They are looking for after-war business now, and others will be looking for it later on.

"Hence it is said that the du Pont Company has undertaken the manufacture and sale of fabrikoid, pyralin, lacquers, solvents and other chemicals. The Company has bought during the year the varnish and paint business of Harrison Bros. & Co., the Beckton Chemical Co., Cauley, Clark & Co., and the Bridgeport

Wood Finishing Co. It has also purchased nitrate lands in Chile to enable it to produce all of its own nitrates. Meantime its stock earned \$77.49 per share in 1917, against \$133.31 in 1916; and it gross sales were \$269,842,465, as compared with \$318,845,685.

"Here is a line of a practical kind on the business conditions we may expect to find after the war. One of the most far-seeing of our corporation is using its war profits to buy up other businesses to take the place later on of its war business. In other words, it is discounting the future idleness of a considerable portion of its powder plants. When investors in munitions and other war shares begin to discount in like manner, we ought to witness a pretty lively swapping from war brides into standard stocks. Admittedly the war brides look a little fagged and worn after their lively downhill honeymoon of 1917, but they are apt to look a great deal more fagged when peace comes, and hundreds of other managements begin following the example of the du Pont Powder."

NOTES OF GENERAL INDUSTRIES, INC., DATED FEBRUARY 28, 1918, PAYABLE AUGUST 28, 1918, WITH INTEREST AT 6 PERCENT EXECUTED IN FOLLOWING DENOMINATIONS AND SOLD BY GENERAL INDUSTRIES, INC., TO FOLLOWING BANKS CARRYING COLLATERAL SPECIFIED BELOW

Bank	Amount of Loan	Collateral 4 Percent U. S. Treasury Certificates	Amount of Second Loan	Collateral	
				Chevrolet Stock (shares)	General Motors Common Stock (shares)
Chase National Bank	\$1,500,000.00	\$1,500,000.00	\$500,000.00	11,000	5,200
Guaranty Trust Company	1,500,000.00	1,500,000.00	500,000.00	11,000	5,200
National City Bank	1,500,000.00	1,500,000.00	500,000.00	11,000	5,200
Bankers Trust Company	1,500,000.00	1,500,000.00	500,000.00	11,000	5,200
First National Bank	750,000.00	750,000.00	250,000.00	5,500	2,600
National Bank of Commerce	1,500,000.00	1,500,000.00	500,000.00	11,000	5,200
Equitable Trust Company	750,000.00	750,000.00	250,000.00	5,500	2,600
Mechanics & Metals Nat. Bank	900,000.00	900,000.00	300,000.00	6,600	3,120
Irving National Bank	675,000.00	675,000.00	225,000.00	4,950	2,340
Hanover National Bank	675,000.00	675,000.00	225,000.00	4,950	2,340
Totals	11,250,000.00	11,250,000.00	3,750,000.00	82,500	39,000
duPont Securities Co.	5,856,000.00	4,392,000.00	0.00	32,208	15,225

NOTES OF GENERAL INDUSTRIES, INC., DATED JANUARY 8, 1918, PAYABLE SEPTEMBER 1, 1918, WITH INTEREST AT 6 PERCENT, GIVEN TO FOLLOWING PERSONS IN FOLLOWING AMOUNTS

W. C. Durant	\$1,200,000.00	-----	\$0.00	-----	\$17,200
Nathan Hofheimer, Trustee	648,000.00	-----	0.00	-----	9,250
Nathan Hofheimer	252,000.00	-----	0.00	-----	3,800
Corinne Hofheimer	450,000.00	-----	0.00	-----	6,450
Helen M. Hofheimer	225,000.00	-----	0.00	-----	3,200
Arthur Hofheimer	225,000.00	-----	0.00	-----	3,200
Grand Totals	23,106,000.00	\$15,642,000.00	\$3,750,000.00	\$114,708	54,225

Mr. McHUGH. Mr. Harris, were the companies referred to here acquired by the Du Pont Corp. for the purpose of producing products which were sold to the automobile trade?

Mr. HARRIS. I would not like to mention the purpose; that may be in question. They purchased these plants and these plants were used to supply products used in the automotive trade.

Mr. McHUGH. Mr. Harris, I was asking you whether or not you have any evidence from these documents that the Du Pont Corp. made other capital available to the General Motors Corp.

Mr. HARRIS. I have committee exhibit 3 before me. Shall I proceed, sir?

Senator O'MAHONEY. Please do.

Mr. HARRIS. This again is a report by Raskob to the finance committee of Du Pont Co. and it is dated March 19, 1920:

The General Motors Corp., in order to carry out a development program which has been reduced to the greatest degree possible without sacrificing its position in the industry, will need \$60 million of new capital.

Then they go on to say it is difficult to get that:

The development of the industry during the past 4 years has been such as to increase the assets employed from \$58 million in 1915 to \$452 million in 1919, an increase of approximately \$100 million per year. There is every reason to believe that there will be ample opportunity afforded for expansion at a very rapid rate during the next few years and this affords splendid opportunity to interest new partners without the present partners sacrificing anything. In other words, if the present partners have \$400 million employed earning 30 percent and the industry can employ \$60 million additional which will also earn 30 percent, then there is no sacrifice in having the \$60 million additional supplied by others, provided they are satisfactory partners.

We are in the fortunate position of having Nobels—

Nobels, sir, with the explosives concern—

keenly interested in the matter. Sir Harry McGowan—

who, I believe, was with the Nobel interests—

is here now and we have discussed this situation very thoroughly with him with the result that we have tentatively suggested that the General Motors Corp. which has approximately \$150 million of common stock outstanding make an offer of 20 percent additional common stock to its stockholders aggregating \$30 million of new common stock, the rights accruing to the Du Pont-Durant stockholdings will be approximately 60 percent or \$18 million par value which at \$200 per share will cost \$36 million.

Mr. Durant has consented to turn his rights over to Nobel provided Du Pont will do likewise, with the understanding that Nobels will purchase the stock and hold it as an investment and not purchase it as a speculation.

He suggests the finance committee approve the principle and request Du Pont American Industries, which it is now called, to surrender its rights to Nobel.

Senator O'MAHONEY. What is the Du Pont American Industries?

Mr. HARRIS. That is the successor to the General Industries. They are the purchasing agent of the stock.

Senator O'MAHONEY. Now this I interpret to mean that the Du Ponts had organized the General Industries Corp. for the purpose of purchasing stock.

Mr. HARRIS. For them in General Motors.

Senator O'MAHONEY. This was a family corporation, was it not?

Mr. HARRIS. A firm corporation, the Du Pont—

Senator O'MAHONEY. The Du Pont Co.

Mr. HARRIS. That is right, sir.

Senator O'MAHONEY. So the Du Pont Co. was investing through this corporation which had no other business.

Mr. HARRIS. As far as I know.

Senator O'MAHONEY. And then that corporation was altered in name to Du Pont Industries, Inc.

Mr. HARRIS. I think it was again altered into securities company, or some such name. I think it finally went out.

Senator O'MAHONEY. Do you have any knowledge of why these changes were made?

Mr. HARRIS. No; I don't recall why it was. It was nothing important, as I recall. I really don't know why they did that.

Senator O'MAHONEY. I am not ready to accept your judgment that it was nothing important.

Mr. HARRIS. Excuse me, sir.

Senator O'MAHONEY. I don't believe that financiers in the high brackets do things which are without importance.

Mr. HARRIS. Well, it was just a matter of name, that is what I would like to say. I don't think it had any substance to it.

Senator O'MAHONEY. But we have here clearly illustrated on the statement of Mr. Raskob a plan of financing a corporation, a corporation altogether outside of the Federal law.

There is no Federal law which places any rule of procedure on the building of the giants. They can be constructed only through State corporations which have no jurisdiction over the field in which the business was to be carried on. Do you follow me?

Mr. HARRIS. Yes; I do, sir.

Senator O'MAHONEY. Do you agree with that statement?

Mr. HARRIS. Yes; I do.

Senator O'MAHONEY. I wanted to emphasize it in the record. Proceed.

Mr. McHUGH. Mr. Harris, do any of these documents reflect the continued expansion of the General Motors Corp. and continued interest of the Du Pont Corp. in General Motors?

Mr. HARRIS. Yes; committee exhibit 4.

Senator O'MAHONEY. Was this recommendation approved in No. 3?

Mr. HARRIS. It was approved, I believe, because they started to work on it, but it wasn't carried out completely because times were bad in England and the English company was not able to take the quota offered to it.

(Committee exhibit 3 is as follows:)

(Government Exhibit 140. In the District Court of the United States, Northern District of Illinois, Eastern Division. Before La Buy, J. Harry A. Harnden, Official Court Reporter)

MARCH 19TH, 1920.

To: Finance Committee, Du Pont Company.

From: J. J. Raskob.

The General Motors Corporation, in order to carry out a development program which has been reduced to the greatest degree possible without sacrificing its position in the industry, will need \$60,000,000.00 of new capital. Due to the investment conditions existing in the world and particularly in this country, it is felt impossible to raise this new capital through the sale of debenture stock, and, as the capital will be permanently required in the business, it is felt that it should not be secured through the issue of short-term notes, so that it becomes necessary for the common-stock holders to supply the money themselves or to interest new partners.

The development of the industry during the past four years has been such as to increase the assets employed from \$58,000,000 in 1915 to \$452,000,000 in 1919, an increase of approximately \$400,000,000 in four years, or at the rate of \$100,000,000 per year. There is every reason to believe that there will be ample opportunity afforded for expansion at a very rapid rate during the next few years, and this affords splendid opportunity to interest new partners without the present partners sacrificing anything. In other words, if the present partners have \$400,000,000 employed earning 30 percent and the industry can employ \$60,000,000 additional which will also earn 30 percent, then there is no sacrifice in having the \$60,000,000 additional supplied by others provided they are satisfactory partners.

We are in the fortunate position of having Nobels keenly interested in the matter. Sir Harry McGowan is here now, and we have discussed this situation very thoroughly with him, with the result that we have tentatively suggested that the General Motors Corporation, which has approximately \$150,000,000 of common stock outstanding, make an offer of 20 percent additional common stock to its stockholders, aggregating \$30,000,000 of new common stock to be issued at \$200.00 per share, thus supplying the \$60,000,000 required. Of this \$30,000,000 of new common stock, the rights accruing to the duPont-Durant stockholdings will be approximately 60 percent, or \$18,000,000 par value, which, at \$200.00 per share, will cost \$36,000,000.

Mr. Durant has consented to turn his rights over to Nobels provided duPont will do likewise, with the understanding that Nobels will purchase the stock and hold it as an investment and not purchase it as a speculation.

My recommendation is that Finance Committee approve the principle enunciated herein and request the DuPont American Industries, Inc., to surrender its rights to Nobels provided this arrangement can be carried through.

There is attached hereto a memorandum showing how the price of \$200.00 per share is justified as a proper price for a partnership basis.

/s/ J. J. RASKOB.

NOTE.—At end of document are following signatures: P. S. du Pont, J. J. Raskob, OK Wm. Coyne, H. F. Brown, and L. du Pont. "Return to Room 9059"; stamp on page 1 and "Return to Executive Committee Room 9069"; stamp on both pages.

7/AL

	Amount	To purchase a 10 percent interest		Percent on investment	Comparative percent on investment in common stock at 200
		Cost	Earnings		
6 percent preferred and debenture stock.....	\$75,000,000	\$7,500,000	\$450,000	-----	-----
7 percent debenture stock.....	25,000,000	2,500,000	175,000	-----	-----
Common stock.....	153,750,000	15,375,000	1,461,250	-----	-----
Total.....	253,750,000	-----	-----	-----	-----
Surplus Nov. 30.....	80,000,000	-----	-----	-----	-----
Contingent reserves.....	13,250,000	-----	-----	-----	-----
Estimated earnings over dividends from December to May.....	40,000,000	-----	-----	-----	-----
Estimated surplus May 1, 1920.....	133,250,000	13,325,000	-----	-----	-----
Total.....	387,000,000	38,700,000	5,237,500	13.6	15
If common stock earns 40 percent, add 10 percent or.....	-----	-----	1,537,500	4.0	-----
Total.....	-----	-----	6,775,000	17.6	20
If common stock earns 50 percent, add 10 percent or.....	-----	-----	1,537,500	4.0	-----
Total.....	-----	-----	8,312,500	21.6	25
If common stock earns 80 percent, add 30 percent or.....	-----	-----	4,612,500	12.0	-----
Total.....	-----	-----	12,925,000	33.6	40

¹ If common earns 30 percent.

Mr. HARRIS. I can answer the Senator's question directly by referring to committee exhibit 4, numbered page 7.

Senator O'MAHONEY. Yes, sir.

Mr. HARRIS (reading):

Year 1920: Under date of March 19 we were advised that it had been found necessary to raise additional capital for the General Motors Corp. to the extent of approximately \$64 million, and that they would attempt to raise this capital through an offering of common stock to their stockholders. In view of the fact that the Nobels were interested to the extent of desiring to invest in

General Motors Stock, it was decided that we, together with the Chevrolet Motor Co. and certain individuals would assign our rights to the Explosives Trades, Lt.— obviously an English company—

Our rights and others sufficient to cover 1,800,000 shares were assigned to them to be subscribed for at \$120 [sic] per share, amounting in total to \$36 million. Six million dollars of this amount was assigned by them to C. X. L.—

which is Canadian Explosive Ltd—

and Canadian friends; the balance \$30 million was assigned to England (Explosives Trades, Ltd., and English friends). The Canadian amount was taken up as planned. However, it later developed that due to financial and economic conditions in England only \$15 million of the amount assigned to England could be covered, leaving a balance of \$15 million uncovered. The Explosives Trades, Ltd., was relieved of this amount and it was assigned to and taken up by Chevrolet \$7 million and C. X. L. \$8 million (with the understanding that eventually they would be relieved of same by the Du Pont Co. and the Nobels).

Senator O'MAHONEY. Is this also a Raskob document?

Mr. HARRIS. Yes, sir; I think so. I will check on that. Now just a moment. It does not show the authorship, and I do not recall who the author was. It was, however, accepted as an exhibit.

Senator O'MAHONEY. It is entitled "History of the Du Pont Co.'s Investment in the General Motors Corp."

Mr. HARRIS. That's right, sir.

Senator O'MAHONEY. It is this committee's exhibit 4. It was Government exhibit 166.

Mr. HARRIS. That's right, sir.

Senator O'MAHONEY. And it was defendant's exhibit 110, so it was offered by the Government.

Mr. HARRIS. But not by the defendant. That was a former marking. I think I can help the Senator.

Senator O'MAHONEY. Just a minute. The marking "Defendant's Exhibit 110" is printed on the document.

Mr. HARRIS. That would be at the time of the deposition undoubtedly.

Senator O'MAHONEY. And the printing was done by General Motors.

Mr. HARRIS. Well, I would imagine by the Du Ponts, probably. The deposition that was being taken was the deposition of Pierre du Pont, Irénée du Pont, and I think of Sloan; it was from the defendant's side, sir, and the document is from the defendant, and I think I can help you on the authorship. I imagine that the A. B. E., whose initials appear at the bottom, is A. B. Echols.

Senator O'MAHONEY. Now, I desire to make this observation from the documents which you have already presented. We have in the first instance the entry of the Du Pont group, which, according to the exhibits in the words of Mr. Raskob, had found an opportunity no longer to remain a small company. Their previous business was largely the manufacture of explosives.

As time went on and as set forth in this document, the Nobels Co., a European company, engaged in the manufacture of explosives for war, was invited to enter into the transaction. It was decided, according to this memorandum, that—

we together with the Chevrolet Motor Co.—

which I take it means "we, the Du Ponts"—

Mr. HARRIS. Yes, sir.

Senator O'MAHONEY (continuing) :

together with the Chevrolet Motor Co. and certain individuals would assign our rights to the Explosives Trades, Ltd.

That, I take it, is a British corporation.

Mr. HARRIS. Yes.

Senator O'MAHONEY (continuing) :

Our rights and others sufficient to cover 1,800,000 shares were assigned to them to be subscribed for at \$120 [sic] per share amounting to a total of \$36 million.

Mr. HARRIS. That should be \$200. That is what they mean to point out.

Senator O'MAHONEY. Then it proceeds—

\$6 million of this amount was assigned by them to C. X. L.

Mr. HARRIS. Canadian Explosives, Ltd., a Canadian outfit.

Senator O'MAHONEY. Another corporation engaged in the manufacture of explosives, "and Canadian friends." Then I find this sentence which is not clear:

The balance, \$30 million, was assigned to England (Explosives Trades, Ltd., and English friends).

Mr. HARRIS. That's right.

Senator O'MAHONEY. That, I take it, means not to England as a government.

Mr. HARRIS. Oh no, no.

Senator O'MAHONEY. But to English corporations, the Explosives Trades?

Mr. HARRIS. That's right. They fell down on it.

Senator O'MAHONEY. The real question which lies at the very basis of this whole study by our committee is whether the structure of corporate activity in interstate and foreign commerce built up through the profits and the savings of explosive companies in the United States, in England, and in Canada is the pattern by which the American economic system of small business and local business is also to be exploded.

Proceed.

Mr. McHUGH. Mr. Harris, does this document indicate in any way the manner in which the J. P. Morgan banking interests participated in underwriting any stock issues or the financing?

Mr. HARRIS. Yes, it does.

In answer to your question, Mr. McHugh, I call your attention to page 8. Do you have that, sir?

Senator O'MAHONEY. Yes, sir.

Mr. HARRIS (reading) :

Under date of June 9 we sold 125,000 shares of no-par value General Motors stock to J. P. Morgan & Co. at \$20 per share. This sale was made for the purpose of providing J. P. Morgan & Co. with the total amount of stock it was previously agreed they should own.

Under date of July 1 authorization was given to subscribe up to 1,500,000 to a \$10 million syndicate with J. P. Morgan & Co. as managers, it being understood that any stock acquired would be sold and the syndicate liquidated.

The purpose of that syndicate, I believe, sir, was to keep the price of the stock up.

The result of our participation in this syndicate was that we obtained 1,347 shares of General Motors stock and \$15.32 in cash. These shares were sold at the time the syndicate was liquidated.

Under date of November 19 it became necessary to relieve W. C. Durant of approximately 2,600,000 shares of no-par value General Motors common stock at \$9.50 per share. To finance this transaction the Du Pont Securities Co. was incorporated. This new company was authorized to issue \$20 million 1-year 8-percent collateral notes, \$7 million 8-percent voting preferred stock and 100,000 shares no-par value nonvoting common stock.

The Du Pont American Industries—

which were in back of that other company—

subscribed to \$5,200,000 par value preferred stock for which it paid cash (this amount was borrowed from the Du Pont Co. who in turn had to borrow \$2,800,000 from the Christiana Securities Co.) .

The Christiana Securities Co. was a holding company of the family holdings of the Du Ponts in the Du Pont Co.

The Chevrolet Motor Co. took the balance of the preferred stock \$2,800,000 for which it paid cash.

Senator O'MAHONEY. Pardon me for interrupting.

Mr. HARRIS. Yes, of course.

Senator O'MAHONEY. There are some different values of stock in the paragraphs which you have read. The first value was \$20 per share. That was the value of the 125,000 shares of no-par value General Motors stock which were sold to J. P. Morgan & Co.

Mr. HARRIS. That is right, sir.

Senator O'MAHONEY. The next value I see in the third paragraph—

Mr. HARRIS. That is right.

Senator O'MAHONEY (continuing). With respect to the Durant purchase. It had become necessary to relieve Durant—

Mr. HARRIS. That is right.

Senator O'MAHONEY (continuing). Of 2,600,000 shares of this same no-par value General Motors stock.

Mr. HARRIS. That is right.

Senator O'MAHONEY. At \$9.50 a share.

Has anybody on the staff made any check as to what the market value of the stock at that time was?

Mr. McHUGH. I think not, Senator.

Senator O'MAHONEY. Did it fall from \$20 a share on the market on June 9 to \$9.50 on November 19?

Mr. McHUGH. I do not know. I think maybe Mr. Harris might have some information on that.

Mr. HARRIS. I do not know. I think the \$20 a share was a contrived price, a price without any market, that is, this Morgan arrangement.

I could say to the Senator that very little stock was bought or sold by the syndicate, and Durant, we understand, complained that the syndicate did not keep up the price. By the time he had to dispose of his shares, it might very well have been, although I cannot say so, that \$9.50 represented the market.

Senator O'MAHONEY. It might possibly be that the \$20 per share of the sale to J. P. Morgan & Co. was designed to indicate the level at which the market should be maintained.

Mr. HARRIS. I could not say, Senator; I do not know.

Senator O'MAHONEY. I think it would be worth checking by the staff to see just what the arrangement was.

Mr. Harris would indicate that, in his opinion, the sale to J. P. Morgan & Co. was a contrived sale.

Mr. HARRIS. Agreed, perhaps, would be a better word.

Senator O'MAHONEY. Or an agreed sale, designed to maintain a position on the stock market.

Mr. HARRIS. I could not say as to that, Senator; I do not know what the design of it was.

I do know, as they say here, that Morgan was going to buy some of the stock, and this was the stock he got, and this was the price paid. I know nothing about the background.

Senator O'MAHONEY. Well, of course, you were not called to testify about that, but it is one of those interesting instances of high finance which, in due time, I think will have to be clearly revealed to the people of the United States if they are to retain control of their own economic system.

Mr. HARRIS. I call the Senator's attention to page 9 which, in answer to Mr. McHugh's question, the \$20 million in notes, which were issued by, I think, the Du Pont Securities Co., were bought by Morgan and secured by 4 million shares of General Motors common stock.

Then under date of December 31—

We sold Durant—

I call your attention to that—

1,307,499 shares of no-par value General Motors stock for 95,000 shares of Chevrolet stock.

If you will turn the page:

At the end of year 1920 we owned 1,124,312 shares—

that is, Du Pont Co., through its various subsidiaries, owned 1,124,312 shares—

General Motors stock which cost per share \$11.78.

We also owned 253,490 shares of Chevrolet stock which cost per share \$128.90—these shares converted to their General Motors equivalent (no-par value shares) represented 3,802,350 shares—

at a value of somewhat over \$32 million.

Total held at December 31, 1920, 4,926,662 shares of the two companies, at a total cost of \$45,924,418—

representing an average cost of \$9.32 per share, and 23.96 percent of the outstanding stock of the General Motors Corp.

Mr. McHUGH. Mr. Harris, does this document reflect the continued investment in the subsequent years?

Mr. HARRIS. Yes, it does.

Mr. McHUGH. Of the Du Ponts?

Mr. HARRIS. In 1921:

Under date of January 18, authorization was given to purchase from W. C. Durant his 40 percent interest (40,000 shares) in the common stock of the Du Pont Securities Co., payment therefor to be made with 230,000 shares of General Motors stock; also authority was granted to loan W. C. Durant \$500,000, this loan to be secured by 135,000 shares of General Motors stock with the option to purchase same from him at any time within 12 months at \$15 per share.

Mr. McHUGH. Mr. Harris, was this the transaction which effectively removed Durant then from his interest in the General Motors Corp.?

Mr. HARRIS. I think it can properly be said it was, because then came on the next page an answer to the Senator's question about the financing.

During April of this year it was decided to take immediate steps toward permanently financing our General Motors holdings acquired from Durant, same having been temporarily financed in November 1920, through the Du Pont Securities Co. This permanent financing took the form of \$35 million par value 7½ percent 10-year gold bonds of the E. I. du Pont de Nemours & Co. which were sold as of May 1 to J. P. Morgan & Co. at 95 thereby yielding \$33,250,000, the proceeds from which were employed as set forth in the tabulation here below.

They set forth how they used the money.

I might say at this point that that brought up the percentage of stock owned by Du Pont from 23.8 to something over 35 percent, and that the Du Pont Co. almost immediately thereafter made arrangements to dispose of that difference in a manner which I will take up when counsel asks me.

Mr. McHUGH. Mr. Harris, do these documents reflect what the summarization is of the control by Du Pont of the General Motors Corp.?

Mr. HARRIS. Yes.

(Committee exhibit 4 previously referred to follows:)

(Government Exhibit 166. In the District Court of the United States, Before Northern District of Illinois, Eastern Division. Before La Buy, J. Harry A. Harnden, Official Court Reporter)

AUGUST 17, 1921.

HISTORY OF THE DU PONT COMPANY'S INVESTMENT IN THE GENERAL MOTORS CORPORATION

(Enclosure—Exhibit "A")

YEAR 1917

On December 21, 1917, Action was taken at a joint meeting of the Finance and Executive Committees authorizing the purchase of \$25,000,000 worth of Common Stock of the General Motors and Chevrolet Companies. The purchase of these stocks was begun immediately, and by December 31 of that year we had accumulated a total of 5,600 shares of General Motors and 40,200 shares of Chevrolet. The Chevrolet stock expressed in General Motors equivalent (\$100 par value stock) amounted to a total of 51,540.6 shares of General Motors stock. The sum of these stocks on the present-day no-par basis amounted to 515,406 shares, representing 6.7 percent of the outstanding stock of that corporation. This stock was purchased at a total cost of \$3,628,160 or \$7.04 per share (on the present-day no-par basis).

Some statistics relating to this investment at December 31, 1917, (as will be found in Exhibit "A" wherein this stock is treated with on the present-day no-par basis) are:

	Per Share
(a) General Motors Earnings for the year available for Common Stock amounted to \$26,285,952 or-----	\$3. 42
(b) Cash Dividends Paid Amounted to \$8,073,439 or-----	1. 05
(c) Additions to Surplus Amounted to \$11,508,393 or-----	1. 50
(This includes negative adjustments, details of which are not readily available.)	
(d) The Du Pont Co. received Dividends therefrom amounting to \$00 or---	00
(e) The Du Pont Co.'s portion of the Undivided Profits for the year amounted to \$771,523 or-----	1. 50
(f) The net asset value of our holdings amounted to \$5,925,109 or-----	11. 50
(g) The high and low market prices of General Motors stock for the year were \$14.62 and-----	7. 50

YEAR 1918

Under date of January 4, 1918, the General Industries, Inc., was formed for the purpose of providing a holding medium for our Motors Investment. The authorized total capital of this corporation was \$25,000,000, which was subscribed to in full by the Du Pont Co.

By March 8 we had purchased the full amount of General Motors and Chevrolet stocks provided for in the authorization of December 21, 1917, in fact the total purchases aggregated 99,875 shares (\$100 par value) General Motors stock and 133,690 shares of Chevrolet stock at a total cost of \$25,183,759. The 133,690 shares of Chevrolet converted into its General Motors equivalent amounted to 152,788 shares; resulting in our owning at that date the equivalent of 250,663 shares of General Motors, or 23.83 percent of the outstanding stock of that corporation.

The above purchases were temporarily financed for the account of the General Industries, Inc., by loans of Liberty Bonds from the Du Pont Securities Co. (Christiana Securities) and the Du Pont Co. also notes of the General Industries, Inc., together with cash advanced by the Du Pont Co. During the latter part of 1918 and early 1919 the financing of this amount was permanently cared for by the Du Pont Co. fulfilling its subscription to the Capital Stock of the General Industries, Inc.

On April 9 the name of the General Industries, Inc., was changed to Du Pont American Industries, Inc., and its authorized capital increased to \$50,000,000. The Du Pont Company eventually subscribed to this stock to the extent of \$49,045,300, the proceeds from the sale of the additional \$24,045,300 being employed to purchase additional General Motors and Chevrolet Common Stock, and certain Investment Stocks from the Du Pont Company (such as Austin Powder Co., Equitable Powder Co., Delaware Surety Co., Bank Stocks, etc.)

On April 25 the Du Pont American Industries authorized the purchase of \$3,000,000 additional General Motors in Chevrolet stock; and by July 9 the purchases under this authorization were completed, the amount purchased being 25,425 shares of Chevrolet stock at a total cost of \$3,219,238.

Under date of December 14 the Du Pont American Industries, Inc., authorized the purchase of approximately \$5,000,000 par value General Motors Stock from the McLaughlin Interests, which stock had been issued in payment for the McLaughlin Buick properties in Canada. Also, authorization was given to underwrite \$24,000,000 par value General Motors Stock which was to be offered to its stockholders at \$120 per share, the total underwriting amounting to \$28,800,000.

By December 31 we had purchased the stock from the McLaughlin Interests to the amount of 43,000 shares at \$130 per share, or at a total cost of \$5,590,000. Also we eventually retained from the Underwriting 65,597 [sic] shares at a total cost of \$8,407,833, or an average per share of \$128.21 (the final results of the Underwriting were not known until early in the year 1919. However, since the total amount of the stock underwritten was shown as stock outstanding on the books of the General Motors Corporation at December 31, 1918, we have included in our 1918 figures the 65,579 shares above mentioned).

	Shares	Cost
At the end of the year 1918 we owned 206,454 shares (\$100 par value) General Motors stock which cost \$122.20 per share—these shares on the present-day no par basis represented.....	2,064,540	\$25,228,940
We also owned 159,115 shares of Chevrolet stock which cost per share \$108.79—these shares converted to their General Motors equivalent, and on the present-day no par basis represented.....	1,818,366	17,310,072
Total at Dec. 31, 1918	3,882,906	42,539,012

representing an average cost of \$10.96 per share, and 26.35 percent of the outstanding stock of the General Motors Corporation.

Some statistics relating to this investment at December 31, 1918 (as will be found in Exhibit "A" wherein this stock is treated with on the present-day no par basis) are:

	<i>Per Share</i>
(a) General Motors Earnings for the year available for Common Stock amounted to \$12,905,036 or-----	\$0. 88
(c) Additions to Surplus amounted to \$24,900,545 or-----	1. 69
(2) Additions to Surplus amounted to \$24,900,545 or-----	1. 69
(This includes adjustments; see notes on Exhibit A.)	
(d) The Du Pont Co. received Dividends directly and indirectly to amount of \$3,502,034 or-----	. 90
(e) The Du Pont Co.'s portion of the Undivided Profits for the year amounted to \$6,560,298 or-----	1. 69
(f) The net asset value of our holdings amounted to \$48,421,007 or-----	12. 17
(g) The high and low market prices of General Motors stock for the year were \$16.40 and-----	10. 62

YEAR 1919

In the early part of the year 1919, the Du Pont American Industries, Inc. called on the Du Pont Co. for the balance due on subscription to its Capital Stock and with the proceeds paid off its notes at banks and to certain individuals, which notes were given in the early part of 1918 as a temporary means of financing certain purchases of General Motors and Chevrolet stock.

Under date of August 4, authorization was given to purchase \$5,000,000 worth of General Motors stock at \$225 per share or better; and by August 14 the purchases under this authority amounted to 22,000 shares (\$100 par value) General Motors stock at a total cost of \$4,796,087. It was then decided that no further purchases would be made at that time.

	Shares	Cost
At the end of the year 1919 we owned 238,504 shares (\$100 par value) General Motors stock which cost an average of \$131.90 per share—these shares on the present-day no par value basis represented-----	2, 385, 040	\$31, 448, 181
We also owned 169,115 shares of Chevrolet stock which cost per share \$108.79—these shares converted to their General Motors equivalent, and on the present-day no par basis represented-----	1, 818, 366	17, 310, 072
Total at Dec. 31, 1919-----	4, 408, 983	48, 758, 253

representing an average cost of \$11.06 [sic] per share and 28.74 percent of the outstanding stock of the General Motors Corporation.

Some statistics relating to this investment at December 31, 1919 (as will be found in Exhibit "A" wherein this stock is treated with on the present day no par basis) are:

	<i>Per Share</i>
(a) General Motors earnings for the year available for Common Stock amounted to \$55,792,972 or-----	\$3. 64
(b) Cash Dividends paid amounted to \$17,324,541 or-----	1. 13
(c) Additions to surplus amounted to \$42,232,960 or-----	2. 75
(This includes adjustments; see notes on Exhibit "A".)	
(d) The Du Pont Co. received Dividends directly and indirectly to amount of \$4,969,405 or-----	1. 13
(e) The Du Pont Co.'s portion of the Undivided Profits for the year amounted to \$12,137,331 or-----	2. 75
(f) The net asset value of our holdings amounted to \$66,689,682 or-----	15. 13
(g) The high and low market price of General Motors stock for the year were \$40.62 and-----	11. 87

YEAR 1920

Under date of March 19 we were advised that it had been found necessary to raise additional capital for the General Motors Corporation to the extent of approximately \$64,000,000, and that they would attempt to raise this capital through an offering of Common Stock to their stockholders. In view of the fact that the Nobels were interested to the extent of desiring to invest in General

Motors stock, it was decided that we together with the Chevrolet Motor Co. and certain individuals would assign our rights to the Explosives Trades, Ltd. Our rights and other sufficient to cover 1,500,000 shares were assigned to them to be subscribed for at \$120 [sic] per share, amounting in total to \$36,000,000. \$6,000,000 of this amount was assigned by them to C.X.L. and Canadian friends: the balance \$30,000,000 was assigned to England (Explosives Trades, Ltd., and English friends). The Canadian amount was taken up as planned. However, it later developed that due to financial and economic conditions in England only \$15,000,000 of the amount assigned to England could be covered leaving a balance of \$15,000,000 uncovered. The Explosives Trades, Ltd. was relieved of this amount and it was assigned to and taken up by Chevrolet \$7,000,000 and C. X. L. \$8,000,000 (with the understanding that eventually they would be relieved of same by the du Pont Company and the Nobels).

Under date of May 5, authorization was given to exchange all of our shares of General Motors Common stock at the rate of 1 for 10 for the no par value stock of that corporation, as provided for in the amendments to their certificate of corporation.

Under date of June 9 we sold 125,000 shares of no-par value General Motors stock to J. P. Morgan & Co. at \$20.00 per share. This sale was made for the purpose of providing J. P. Morgan & Co. with the total amount of stock that it was previously agreed they should own.

Under date of July 1 authorization was given to subscribe up to \$1,500,000 to a \$10,000,000 syndicate with J. P. Morgan & Co. as managers, it being understood that any stock acquired would be sold and the syndicate liquidated. The result of our participation in this syndicate was that we obtained 1,347 shares of General Motors stock and \$15.32 in cash. These shares were sold at the time the syndicate was liquidated.

Under date of November 19 it became necessary to relieve W. C. Durant of approximately 2,600,000 shares no-par value General Motors Common stock at \$9.50 per share. To finance this transaction the Du Pont Securities Co. was incorporated. This new Company was authorized to issue \$20,000,000 one year 8 percent collateral notes, \$7,000,000—8 percent voting preferred stock and 100,000 shares no-par value nonvoting common stock.

The Du Pont American Industries subscribed to \$4,200,000 par value Preferred Stock for which it paid cash (this amount was borrowed from the Du Pont Co., who in turn had to borrow \$2,800,000 from the Christiana Securities Co.). The Chevrolet Motor Co. took the balance of the Preferred Stock \$2,800,000, for which it paid cash.

The Common Stock (100,000 shares) was assigned as follows:

40,000 shares to W. C. Durant for balance of his equity in stock purchased.

20,000 shares to J. P. Morgan & Co. for underwriting the \$20,000,000 notes.

24,000 shares to Du Pont American Industries, Inc., in consideration for loan of 824,179 shares no par value General Motors stock to be used as collateral on notes.

16,000 shares to Chevrolet Motor Co. in consideration for the loan of 549,453 shares of no par value General Motors stock for use as collateral on notes, the balance of the collateral for the \$20,000,000 notes, amounting to 2,626,368 shares, having been acquired from Durant and Syndicate.

The \$20,000,000 notes were bought by J. P. Morgan & Co., same being secured by 4,000,000 shares of General Motors Common Stock—above mentioned.

Under date of December 31 we sold W. C. Durant 1,307,499 shares no par value General Motors stock for 95,000 shares of Chevrolet stock.

	Shares	Cost
At the end of year 1920 we owned 1,124,312 shares of General Motors stock which cost per share \$11.78.....	1, 124, 312	\$13, 249, 434
We also owned 253,490 shares of Chevrolet stock which cost per share \$128.90—these shares converted to their General Motors equivalent (no par value shares) represented.....	3, 802, 350	32, 674, 984
Total at Dec. 31, 1920.....	4, 926, 662	45, 924, 418

representing an average cost of \$9.32 per share, and 23.96 percent of the outstanding stock of the General Motors Corporation.

Some statistics relating to this investment at December 31, 1920 (as will be found in Exhibit "A" wherein this stock is treated with on the present day no-par basis) are:

	<i>Per Share</i>
(a) General Motors Earnings for the year available for Common Stock amounted to \$32,129,949-----	\$1. 56
(b) Cash Dividends paid amount to \$17,893,289-----	. 87
(In addition to this cash the stock dividends were paid at the rate of 2½ percent in the May, August, and November quarters to the extent of 1,294,044 shares no-par-value stock.)	
(c) Additions to surplus amounted to \$42,631,320 or-----	2. 07
(This includes adjustments; see notes on Exhibit "A.")	
(d) The Du Pont Co. received Dividends directly and indirectly to the amount of \$6,120,204 or-----	1. 24
(e) The Du Pont Co.'s portion of the Undivided Profits for the year amounted to \$10,213,612 or-----	2. 07
(f) The net asset value of our holdings amounted to \$78,320,178 or-----	15. 90
(g) The high and low market prices of General Motors Stock for the year were \$42 and-----	12. 75

YEAR 1921

Under date of January 18, authorization was given to purchase from W. C. Durant his 40 percent interest (40,000 shares) in the Common Stock of the du Pont Securities Co., payment therefor to be made with 230,000 shares of General Motors Stock; also authority was granted to loan W. C. Durant \$500,000, this loan to be secured by 135,000 shares of General Motors stock with the option to purchase same from him at any time within twelve months at \$15.00 per share.

Under date of June 27 authorization was granted to exchange 230,196 shares of Chevrolet Stock for General Motors Stock at an exchange rate of 1 share of Chevrolet for 14.43 shares of General Motors. This resulted in the acquisition of 3,177,428.28 shares of General Motors Stock, leaving us with a balance of 33,294 shares of Chevrolet Stock unconverted.

During April of this year it was decided to take immediate steps toward permanently financing our General Motors holdings acquired from Durant, same having been temporarily financed in November 1920 through the Du Pont Securities Co. This permanent financing took the form of \$35,000,000 par value 7½ percent Ten Year Gold Bonds of the E. I. du Pont de Nemours & Co. which were sold as of May 1 to J. P. Morgan & Co. at 95 thereby yielding \$33,250,000, the proceeds from which were employed as set forth in the tabulation herebelow.

Tabulation showing disposition of proceeds from sale of \$35,000,000 7½ percent bonds of E. I. Du Pont De Nemours & Co.

RECEIPTS

Par value of 7½ percent bonds sold-----	\$35, 000, 000
Cash received from liquidation of Du Pont Securities Co.-----	1, 020, 400
	36, 020, 400

DISBURSEMENTS

Purchase from Chevrolet Motor Co. of 184,000 shares of General Motors-----	\$2, 024, 000
Purchase from Chevrolet Motor Co. 28,000 shares Du Pont Securities Preferred-----	2, 800, 000
Purchase from Chevrolet Motor Co. of 16,000 shares Du Pont Securities Common-----	1, 564, 000
Repayment to Christiana Securities Co. of amount borrowed from them in November 1920 to aid in financing the purchase of \$4,200,000 Du Pont Securities Co. Preferred Stock-----	2, 800, 000
Purchase of \$20,000,000 notes and 20,000 shares of Du Pont Securities Co. Common Stock-----	20, 200, 000

Tabulation showing disposition of proceeds from sale of \$35,000,000 7½ percent bonds of E. I. Du Pont De Nemours & Co.—Continued

DISBURSEMENTS—continued

Purchase from C.X.L. of 200,000 shares of General Motors Stock (this being our portion of the amount originally assigned to the Explosives Trades Ltd.) it having been agreed that we and Nobels would eventually relieve C.X.L. of 400,000 shares which cost \$8,000,000-----	\$4,000,000
Expenses including discount on 7½ percent Bond Issue, printing and transfer taxes-----	1,885,600
	<u>\$35,273,600</u>
Balance not employed in financing of General Motors stock purchases-----	<u>746,800</u>

In the above exposition we have considered all transactions as having been made in the name of E. I. du Pont de Nemours & Co. Some of these transactions were handled in the name of the Du Pont Co. and some in the name of the Du Pont American Industries; however, upon the completion of these transactions the du Pont American Industries owned 6,882,108 shares no par value General Motors Stock and 33,294 shares Chevrolet Stock, or the equivalent of 7,362,540 shares no par value General Motors Stock.

The financial structure of the Du Pont American Industries was changed as the result of the following transactions:

The Du Pont American Industries sold to the Du Pont Company \$25,000,000 Six Per Cent 10 Year, Collateral, Serial Notes secured by the deposit of 7,000,000 shares of General Motors Stock with the Trustees of this issue.

The American Industries declared a dividend of 10 Per Cent on its Capital stock amounting to \$4,904,530, this dividend being paid from the proceeds from sale to the Du Pont Co. of such stocks as Austin Powder Co., Equitable Powder Co. Bank Stocks, etc.

\$20,000,000 Eight Per Cent Preferred Stock was issued to the Du Pont Co. in exchange for a like amount par value of its Common Stock which was held by the Du Pont Co., thus reducing its outstanding Common Stock held by the Du Pont Co. to \$29,045,300.

Thus it will be seen that all of our General Motors holdings (equivalent to 7,362,540¹ Shares) is now owned through the Du Pont American Industries, Inc., all of its Common Stock, Preferred Stock and Bonds as set forth below being owned by the Du Pont Company.

Common Stock-----	\$29,045,300
Preferred Stock-----	20,000,000
Bonds-----	25,000,000
Total Capitalization-----	<u>74,045,300</u>

	Shares	Cost
At the present writing we own 6,882,108 shares General Motors stock which cost \$10.36 per share-----	6,882,108	\$71,289,540
We also own 33,294 shares of Chevrolet stock which cost \$128.90 per share—these shares converted to their General Motors equivalent and on the present-day no-par basis represent-----	480,432	4,291,719
Total at present-----	<u>7,362,540</u>	<u>75,581,259</u>

¹ This does not include 200,000 shares bought from C. X. L. at a cost of \$20. per share, or \$4,000,000.

representing an average cost of \$10.27 per share, and 35.8 of the outstanding stock of the General Motors Corporation.

ABE: TM.

Mr. HARRIS. The statement was made in committee exhibit 5 at the bottom of the first page:

As the directors know—

this is Raskob to the directors of Du Pont.

Senator O'MAHONEY. What exhibit are you talking about now?

Mr. HARRIS. Committee exhibit 5, sir.

This is Raskob to the directors August 19, 1921, calling attention first—I see Mr. Echols' name as assistant treasurer; that was probably the ABE that you saw.

The second paragraph I call the Senator's attention to is as follows:

We decided to invest in this industry in December 1917 and completed an initial investment of \$25 million early in 1918. In 1919 this investment was increased to \$45,182,000; in 1920 to \$47,532,000; and in 1921 to \$75,581,000.

Then, Raskob says at the bottom:

As the directors know, we are now in control of the company and are completely responsible for its politics—

I think that should be policies—

and management and our voting strength may be summarized as follows.

The voting strength appears on the second page. I call the Senator's attention to the fact that in counting up the voting strength Mr. Raskob includes the voting power of the friends of Du Pont, Nobel, Canadian Explosives, Nobel Industries, Bonus Custodian, Savings and Investment Fund, and J. P. Morgan & Co.; all are included as a total of 10,907,925 shares out of a total outstanding of 20,477,734 shares.

Senator O'MAHONEY. Again we find Du Pont and its Nobel holdings, Canadian Explosives, Ltd., and Nobel Industries all involved in a control of General Motors which Mr. Raskob on August 19, 1921, described as control of the company, with complete responsibility for its policies, adopting your amendment—

Mr. HARRIS. I think so, sir.

Senator O'MAHONEY (continuing). And management.

Obviously, this association of explosive companies of the United States, of the Nobel Co., whether it was Sweden or Britain at that time, I do not know, and Canadian, was not an ideal way to promote competition in the manufacture and sale of explosives, which killed so many millions in World Wars I and II.

Mr. McHUGH. Mr. Harris, this document reflects the voting control of the Du Pont Co. and General Motors as of 1921; is that right?

Mr. HARRIS. If I might amend your question, it reflects the ownership by percentage of stock in that year. I think you will find—on which page is that now?

Mr. McHUGH. Referring to committee exhibit 5.

Mr. HARRIS. Yes; that is August 19, 1921; oh, yes, that is the third paragraph; that is what, I think, you are referring to, is it not?

Mr. McHUGH. Yes.

Mr. HARRIS. Yes.

(Committee exhibit 5 previously referred to follows:)

GOVT. TRIAL EX. No. 1345

(DP)
GMC-1369

(The data in this report is intended only for the party to whom addressed. The report should be turned over to the Secretary immediately after the meeting at which it is considered [Stamp].)

AUGUST 19, 1921.

To: Directors—E. I. du Pont de Nemours & Co.

From: Mr. J. J. Raskob.

GENTLEMEN: The enclosed history of the du Pont Company's investment in the General Motors Corporation (Exhibit I) is very full and has been prepared with a great deal of care by Mr. Echols, Assistant Treasurer.

We decided to invest in this industry in December 1917 and completed an initial investment of \$25,000,000 early in 1918. In 1919 this investment was increased to \$45,182,000; in 1920 to \$47,532,000; and in 1921 to \$75,581,000.

The report (Exhibit II) shows that the average cash return, in the way of dividends, on our investment during the three years (1918-1919 and 1920) was 12.34 percent, with the average earnings equal to 36.8 percent on the investment and at the present time the book value of General Motors shares is \$15.75 per share as against an average cost to us of \$10.27 per share for the 7,362,540 shares, which we now hold.

As the Directors know we are now in control of the company and are completely responsible for its policies and management and our voting strength may be summarized as follows:

Preferred and debenture stocks outstanding (which are nonvoting), approximately \$100,000,000—

	<i>Shares</i>
Common stock outstanding-----	20, 477, 734
du Pont Company Holdings-----	6, 882, 108
Chevrolet Company Holdings (this company is controlled by du Pont Co.)-----	2, 001, 091
du Pont—Nobel Holdings-----	400, 000
Canadian Explosives, Ltd.-----	258, 243
Nobel Industries-----	609, 425
Bonus Custodian-----	11, 213
Savings & Investment Fund-----	228, 958
J. P. Morgan & Company-----	516, 887
Total-----	10, 907, 925

On July 11th the Company had 43,000 common stockholders (representing an increase of 5,000 in three months), and about 23,000 preferred and debenture stockholders, making a total of approximately 65,000 stockholders. The present condition of the company is well set forth in our Report to the New York Stock Exchange as of June 30, 1921, a copy of which is attached hereto (Exhibit IV).

It is interesting to note the relation of our investment in General Motors Corporation to our total investment and Mr. Echols had prepared statements which show that du Pont Company has a total investment, excluding goodwill, of \$251,800,000. Of this, the amount invested in General Motors is \$75,600,000. Leaving the total of all of our other investments, \$176,200,000.

An estimate of probable future earnings of the du Pont Company on its total investment in other than General Motors Corporation, over say the next three years, is attached (Exhibit III) which shows a return of 6 percent. I understand it is the feeling of the Executive Committee that it will be difficult to realize the figures shown in this estimate as an average over the next three years, but, of course, this is a matter of opinion. It is the writer's belief that we should in some way or other be able to earn at least 6 percent on our investment.

A statement is also attached (Exhibit III) showing:

(A) If General Motors Corporation earns \$58,100,000 (equal to 10 percent on its gross assets) the du Pont Company's portion will be \$17,200,000.

(B) If General Motors Corporation earns \$72,638,000 (equal to 12½ percent on its gross assets) the du Pont Company's portion will be \$22,421,000.

(C) If General Motors Corporation earns \$87,200,000 (equal to 15 percent on its gross assets) the du Pont Company's portion will be \$27,700,000.

Using the data as contained in these statements, the relative investment of the du Pont Company in General Motors, VS, its total investment in all other properties and the relative amount of earnings accruing to it from these sources, under varied assumptions, may be stated as follows:

Estimated earnings

du Pont Co.'s investment in—	Amount	du Pont Co., at 6 percent on assets in manufactur- ing and all other than General Motors invest- ment; General Motors, at 10 percent on its gross assets	du Pont Co., at 8 percent on assets in manufactur- ing and all other than General Motors invest- ment; General Motors, at 12½ percent on its gross assets	du Pont Co., at 10 percent on assets in manufactur- ing and all other than General Motors invest- ment; General Motors, at 15 percent on its gross assets
General Motors Corp. stock.....	\$75,600,000	\$17,200,000	\$22,421,000	\$27,700,000
Manufacture and all other than General Motor stock.....	176,200,000	10,640,000	14,096,000	17,620,000
Total.....	251,800,000	27,840,000	36,517,000	45,320,000
Less:				
Bond interest (\$35,000,000 7½ percent bonds).....		2,650,000		
Preferred dividend, at 6 percent.....		4,270,000		
Total charges.....		6,920,000	6,920,000	6,920,000
Balance available for common stock.....		20,920,000	29,597,000	38,400,000
Equals percent on du Pont common stock (\$63,378,300).....		33	46.7	60.5

† These figures are brought forward from exhibit III.

J. J. RASKOB.

NOTE.—"Return to Executive Committee Room 9069" is stamped at top and bottom of first page of document.

Mr. HARRIS. The report and exhibit that accompanied this document show that the average cash return in the way of dividends was 12.34 in 3 years, average earnings 36.8, and at the present time the book value was \$15.75 for the 7 million shares which they now hold. They do not show the percentage of control, that is, the percentage of ownership, but it was around 35 percent.

Mr. McHUGH. In the year following this, Mr. Harris, did the Du Pont Corp. consider that it maintained a voting control of the stock of the General Motors Corp.?

Mr. HARRIS. They did not so state, and they strenuously denied it. If I might mention the fight in Chicago, that is one of the issues now before the Supreme Court. We contend that it did. They contend that it did not.

They had stock ownership—their stock ownership—that was maintained; it was about 23.8 percent during all of the years.

Mr. McHUGH. What was the highest percentage of actual stock ownership?

Mr. HARRIS. About 35 percent, which was soon reduced by the plan which I can call your attention to when you are ready.

Mr. McHUGH. Will you explain, Mr. Harris, what is meant by the managers securities plan?

Mr. HARRIS. Yes.

I call your attention to exhibit No. 6. I will identify this also as Government exhibit No. 235.

The Du Pont Co. then, through its subsidiaries, its buying companies, owned about 35 percent of the outstanding stock of General Motors.

In this committee exhibit 6 you have a plan which was known as the manager securities plan, an incentive plan it was called.

The plan was the work of Raskob, a vice president, together with Donaldson Brown, who was also an executive of Du Pont who, at the time, I believe, was on the finance committee of General Motors, and stayed with them, I think, in both capacities. He was with Du Pont and with General Motors.

I call the Senator's attention to the statement on page 3. Do you have it, sir?

Senator O'MAHONEY. Let us have the date.

Mr. HARRIS. The date is June 21, 1923; and on the second page June 20, 1923.

The management of the General Motors Corp. was carried along under this arrangement—

that was the arrangement of the investment—

until the latter part of 1920 when Mr. Durant became so seriously involved financially that the Du Pont Co. much against its will was forced to take over Mr. Durant's personal common-stock holdings in the General Motors Corp., involving a net increase in the Du Pont Co.'s investment in the security of upward of 2,500,000 shares at a cost of upward of \$25 million, with the result that today we own 7,519,000 shares of General Motors Corp. common stock valued on our books—

which gave Du Pont approximately 38 percent of the total common stock—it was 38, not 35—of the General Motors Corp.—

which is practical control and made it necessary to assume complete responsibility for the management. To properly assume this responsibility our finance committee called upon Mr. Pierre S. du Pont, chairman of our board, to take the presidency of the General Motors Corp.

May I call your attention to the next page:

Mr. du Pont feels that the best manner—

he has now resigned his presidency to Mr. Alfred P. Sloan, Jr.—

Mr. du Pont feels that the best manner in which to attain the greatest success possible in the conduct of the affairs of the General Motors Corp. is for that corporation to interest its principal men in the corporation as substantial stockholders or partners. He not only feels this very keenly, but feels, too, that the Du Pont Co., with its large and controlling interest in the General Motors Corp., has now a splendid opportunity to enhance the value of its own investment in the General Motors Corp. through giving to the General Motors Corp. an opportunity to interest its important employees as managing partners in this great enterprise. The Du Pont Co. is in the happy position on account of its own bonds not maturing for 8 years—

those were the bonds given to purchase that stock—

of being able to supply a plan under which employees can purchase stock on payments deferred over a long period of time and Mr. du Pont, therefore, requested that a plan be developed to accomplish this object.

Incidentally, it took the stock off the Du Pont hands, and they then set up this plan whereby—I will not go into the details unless the Senator wishes—selected employees were enabled to buy General Motors stock at a remarkable figure, as it turned out.

Senator O'MAHONEY. What was that word?

Mr. HARRIS. At a remarkable figure.

Senator O'MAHONEY. A remarkable figure.

Mr. HARRIS. As it turned out, because the enhancement in value was tremendous.

Senator O'MAHONEY. Well, on page 3 of this document from which you have been reading, in describing the plan which was developed

by Mr. Donaldson Brown and Mr. Raskob, the first paragraph provided:

That we place 7,500,000 of General Motors Corp. common stock at \$15 a share—

Mr. HARRIS. That is right.

Senator O'MAHONEY. That is a remarkable figure.

Mr. HARRIS. Yes, sir; as it turned out.

Senator O'MAHONEY (continuing):

aggregating \$112,500,000 in the Du Pont American Industries.

Now, that was another one of the Du Pont finance corporations?

Mr. HARRIS. Yes, sir; we had met it before, and it changes its name again, by the way, Senator, to General Motors Securities Co.

Then if you will notice on page 4 a company under the Delaware law is created which is known as the Managers Securities Co. This is the company in question; its entire capital is \$5,500,000 in capital, common stock.

Senator O'MAHONEY. That is right.

Mr. HARRIS. And the Managers Securities Co. will purchase 200,000 shares—those were the underlying shares of General Motors Securities Co. common stock—for \$37,500,000, to be, which was, a third of the total stock of the company and represents, however, a third of 7,500,000 shares of General Motors. In other words, it represents 2,500,000 shares of General Motors at \$15.

The beneficiaries of this made a small downpayment, and then, I think it appeared, that they were able to buy the rest of it from dividends.

(Committee exhibit is as follows:)

(Government Exhibit 235. In the district court of the United States, Northern District of Illinois, Eastern Division. Before La Buy, J. Harry A. Harnden, Official Court Reporter)

GENERAL MOTORS CORPORATION,
Detroit, Michigan, June 21, 1923.

J. P. LAFFEY, Esquire,
E. I. du Pont de Nemours & Company,
Wilmington, Delaware.

DEAR JUDGE: Enclosed please find copy of letter which I have just written to Mr. du Pont together with copy of report referred to therein. I should like very much to have you study this over and let me talk with you about it either Saturday or Sunday on my return from Detroit.

Very truly yours,

J. J. RASKOB,
Vice President.

JUNE 20, 1923.

To: Finance Committee, E. I. du Pont de Nemours & Company.
From: John J. Raskob, Vice President.

Mr. Donaldson Brown and I have worked out the enclosed plan which we submit and recommend for the careful consideration and approval of your Committee.

In the year 1917 the Directors of the du Pont Company after very careful consideration accepted the invitation of Mr. W. C. Durant to become interested with him as partners in the control and management of General Motors Corporation. This involved our investing a substantial sum of money and taking over the direction of the financial management of the General Motors Corporation. Mr.

Durant in turn agreed to assume responsibility for the Executive Management of the company.

The management of the General Motors Corporation was carried along under this arrangement until the latter part of 1920 when Mr. Durant became so seriously involved financially that the du Pont Company much against its will was forced to take over Mr. Durant's personal common stock holdings in the General Motors Corporation, involving a net increase in the du Pont Company's investment in this security of upwards of 2,500,000 shares at a cost of upwards of \$25,000,000.00, with the result that today we own 7,519,000 shares of General Motors Corporation common stock valued on our books at \$

This gave the du Pont Company approximately 38% of the total common stock of the General Motors Corporation which is practical control and made it necessary to assume complete responsibility for the management. To properly assume this responsibility our Finance Committee called upon Mr. Pierre S. du Pont, Chairman of our Board, to take the presidency of the General Motors Corporation which he consented to do with the clear understanding that he was to occupy the position temporarily only, pending the time when a man capable of assuming the presidency permanently could be found or developed.

After occupying this position for about two and a half years Mr. du Pont felt that Mr. Alfred P. Sloan, Jr., was thoroughly competent and capable to handle the presidency of the Corporation and presented his resignation with the recommendation that Mr. Sloan be elected to succeed him which was done.

Mr. du Pont feels that the best manner in which to attain the greatest success possible in the conduct of the affairs of the General Motors Corporation is for that Corporation to interest its principal men in the corporation as substantial stockholders or partners. He not only feels this very keenly, but feels too that the du Pont Company with its large and controlling interest in the General Motors Corporation has now a splendid opportunity to enhance the value of its own investment in the General Motors Corporation through giving to the General Motors Corporation an opportunity to interest its important employees as managing partners in this great enterprise. The du Pont Company is in the happy position on account of its own bonds not maturing for eight years of being able to supply a plan under which employees can purchase stock on payments deferred over a long period of time and Mr. du Pont, therefore, requested that a plan be developed to accomplish this object.

The plan which has been developed by Mr. Donaldson Brown and the writer provides:

1st. That we place 7,500,000 of General Motors Corporation common stock at \$15.00 a share, aggregating \$112,500,000 in the Du Pont American Industries.

2nd. That the Charter of the Du Pont American Industries be amended to change its name to General Motors Securities Company and to provide a total capitalization of 600,000 shares of common stock of the par value of \$100 per share.

3rd. The General Motors Corporation believes that the greatest enthusiasm and cooperative effort on the part of the principal men in the corporation in the direction of serving the permanent interests and securing the best results for the corporation and its stockholders, can be secured through having these men financially interested in a substantial way in its common stock under a plan, such as hereinafter outlined, whereby their personal interests will be synonymous with those of all stockholders.

4th. The General Motors Corporation will create the Managers Securities Company under Delaware laws and will subscribe and pay in its entire capital of \$5,500,000 common stock and will then cause the Managers Securities Company to purchase 200,000 shares of General Motors Securities Company common stock for \$37,500,000.00 (being $\frac{1}{3}$ of the total stock of this company and representing $\frac{1}{3}$ of the 7,500,000 shares of General Motors Corporation common stock or 2,500,000 shares at \$15.00, or \$37,500,000) payable \$4,700,000.00 in cash and \$32,800,000.00 in 7 percent notes maturing April 1, 1931, and secured as herein-after recited.

5th. In order to further carry out the intent and purpose of this plan in a still more substantial manner Mr. Pierre S. du Pont is ready to sell 433,334 shares of General Motors Corporation common stock to the Managers Securities Company at \$15.00 a share, aggregating a total of \$6,500,000.00 taking in payment therefor \$800,000.00 in cash and \$5,700,000.00, 7 percent eight year notes of the Managers Securities Company hereinbefore referred to.

6th. The General Motors Corporation will then sell to a list of its important men to be selected by its Finance Committee substantially all of the \$5,500,000.00

stock of the Managers Securities Company, reserving for future allotment not more than \$1,000,000 of stock if in the judgment of the Finance Committee this seems desirable. The General Motors Corporation in consideration of all of the foregoing and of the willingness of the du Pont Company and Mr. P. S. du Pont to assist it in the carrying out of this plan to interest its important men in a substantial way as managing partners will enter into an agreement with the Managers Securities Company under which it will pay to the Managers Securities Company each year an amount equal to 6 percent of the net earnings of the General Motors Corporation after deducting Federal taxes and after deducting from net earnings an amount equal to 7 percent on net capital employed, which net capital shall constitute the aggregate sum total of issued and outstanding preferred, debenture and common stock, plus surplus as represented by the published annual statement of the company as of December 31 of the year preceding that calendar year in which the earnings were realized. Any new capital injected through the issuance of preferred, debenture or common stock during any calendar year shall constitute invested capital and 7 percent shall be allowed thereon for the period of time in which it is employed.

In the sale of this \$5,000,000.00 stock of the Managers Securities Company to its principal men the General Motors Corporation will trustee the stock under an agreement which will provide that the corporation shall have the option to repurchase all or any part thereof at the end of any year prior to April 30, 1931, in the event of the death, disability, discharge or resignation of any employee for any reason which in the sole discretion of the directors of the General Motors Corporation shall lead them to believe that the best interests of the corporation will be served through said repurchase. In the event of the corporation exercising its option to repurchase stock from its employees as hereinbefore provided the price paid shall be determined by determining the book value of the stock of the Managers Securities Company, which book value in turn shall be determined by appraising its holdings in the General Motors Corporation and the General Motors Securities Company on the basis of the book value of the common stock of the General Motors Corporation, and payment for purchases so made shall be made to the employee in common stock of the General Motors Corporation valued at the same book value as used in the calculation above mentioned.

7th. From the foregoing it will be noted that the assets of the Managers Securities Company consist of the equivalent of 2,933,334 shares General Motors Corporation common stock—

valued at \$15.00 a share-----	\$44, 000, 000
And its liabilities consist of 7 percent—8 year bonds---	\$38, 500, 000
And Capital Stock-----	5, 500, 000
	<hr/> 44, 000, 000

The \$38,500,000 7-percent—8-year bonds of the Managers Securities Company will be secured by all of its assets, plus the aforesaid agreement between the Managers Securities Company and the General Motors Corporation and the terms of the bond issue will provide that the total net income after expenses of the Managers Securities Company shall be used—

1st. To pay the interest on its bonds. And

2nd. To amortize the principal of its bonds. Provided, however, that if the Managers Securities Company in any year shall receive dividends from its holdings in stock of the General Motors Corporation or General Motors Securities Company, then and in that event it may pay to its own stockholders in dividends an amount not to exceed 7 percent on its own total capital and surplus.

There are attached hereto sheets showing that the Managers Securities Company will be able to pay off its entire issue of \$38,500,000.00 bonds at the end of eight years, based on the assumption that General Motors Corporation will earn an average of 15 percent on capital employed over this period. And in addition to the payment of its total bond issue the Managers Securities Company during this eight year period will be able to pay to its own stockholders dividends aggregating \$12,465,000.00. These figures are based on the assumption that no new capital will be provided for the General Motors Corporation through the sale of senior securities, but that the corporation will put back in the business substantially one-half of its net earnings during that period which will result in the total capital employed by the General Motors Corporation growing from about \$425,000,000.00 at the beginning of 1923 to approximately \$748,000,000.00 at the end of eight years.

8th. The net result of the foregoing plan is that the du Pont Company will sell to important and desirable General Motors partners one-third of its interest

in General Motors Corporation common stock (which is less than the interest we acquired when we bought out our former partner—Mr. W. C. Durant) for \$37,500,000.00. We will be in position to liquidate our entire indebtedness of \$35,000,000.00 of 7½-percent notes created in order to finance this Durant purchase; will retain the same control of General Motors Corporation that we have today through controlling two-thirds of the stock of General Motors Securities Company with its 7,500,000 shares of General Motors Corporation common stock and will definitely tie up with us in the management and control of this huge investment the men in the General Motors Corporation who are definitely charged with the responsibility and success of the corporation.

General Motors Corp.

Apr. 30, 1923;	
Capital stock.....	\$316, 000, 000
Surplus.....	112, 000, 000
Reserves ex Dep.....	13, 000, 000
Pur. Money Mtg.....	1, 000, 000
Total.....	442, 000, 000
Estimated earnings on common stock 8 months to Dec. 31, 1923.....	54, 000, 000
Dividends on common stock \$1.20 regular, \$0.70 extra.....	33, 000, 000
	21, 000, 000
Estimated capital employed Dec. 31, 1923.....	463, 000, 000

Year	Estimated earnings (15 percent on capital employed)	Preferred dividends	Common dividends	Total dividends	
1924.....	\$70, 000, 000	\$6, 800, 000	(\$1.50)—\$30, 900, 000	\$37, 700, 000	\$32, 300, 000
1925.....	75, 000, 000	6, 800, 000	(1.50)—\$30, 900, 000	37, 700, 000	495, 300, 000 37, 300, 000
1926.....	80, 000, 000	6, 800, 000	(2.00)—\$41, 200, 000	48, 000, 000	532, 600, 000 32, 000, 000
1927.....	84, 000, 000	6, 800, 000	(2.00)—\$41, 200, 000	48, 000, 000	564, 600, 000 36, 000, 000
1928.....	90, 500, 000	6, 800, 000	(2.00)—\$41, 200, 000	48, 000, 000	600, 600, 000 42, 500, 000
1929.....	96, 000, 000	6, 800, 000	(2.00)—\$41, 200, 000	48, 000, 000	643, 100, 000 48, 000, 000
1930.....	105, 000, 000	6, 800, 000	(2.00)— 41, 200, 000	48, 000, 000	691, 100, 000 57, 000, 000
Total.....	600, 500, 000	47, 600, 000	267, 800, 000	315, 400, 000	748, 100, 000

Year	Earnings	7 percent on capital and surplus	Balance	6 percent of balance to Managers Securities Co.	Dividends on 2,933,333 shares General Motors common to Managers Securities Co.
1923.....	\$90, 000, 000	\$30, 000, 000	\$60, 000, 000	\$3, 600, 000	{ (\$0.60 reg.) } { (70 Sp.) } \$3, 813, 000
1924.....	70, 000, 000	32, 000, 000	38, 000, 000	2, 300, 000	(1.50) 4, 400, 000
1925.....	75, 000, 000	35, 000, 000	40, 000, 000	2, 400, 000	(1.50) 5, 866, 000
1926.....	80, 000, 000	37, 000, 000	43, 000, 000	2, 600, 000	(2.00) 5, 866, 000
1927.....	84, 000, 000	40, 000, 000	44, 000, 000	2, 600, 000	(2.00) 5, 866, 000
1928.....	90, 500, 000	42, 000, 000	48, 500, 000	2, 900, 000	(2.00) 5, 866, 000
1929.....	96, 000, 000	44, 000, 000	52, 000, 000	3, 100, 000	(2.00) 5, 866, 000
1930.....	105, 000, 000	48, 000, 000	57, 000, 000	3, 400, 000	(2.00) 5, 866, 000
Total.....	690, 500, 000	308, 000, 000	382, 500, 000	22, 900, 000	43, 409, 000

General Motors Corp.—Continued

		Payable	
		Cash	7 percent notes
Buy from du Pont Co. 30 percent of G. M. Sec. Co. equivalent of 2,500,000 G. M. common at \$15.....	\$37,500,000	\$4,700,000	\$32,800,000
From P. S. du Pont 433,334 G. M. common at \$15.....	6,500,000	800,000	5,700,000
Total 2,933,334 G. M. common at \$15.....	44,000,000	5,500,000	38,500,000

MANAGERS SECURITIES CO.

Estimated income and disbursements

End of year	1923	1924	1925	1926	1927	1928	1929	1930
Income:								
Dividends.....	\$3,813,000	\$4,400,000	\$5,866,000	\$5,866,000	\$5,866,000	\$5,866,000	\$5,866,000	\$5,866,000
G. M. payments.....	3,600,000	2,300,000	2,400,000	2,600,000	2,600,000	2,900,000	3,100,000	3,400,000
Total.....	7,413,000	6,700,000	8,266,000	8,466,000	8,466,000	8,766,000	8,966,000	9,266,000
Expenditures:								
Federal taxes.....	450,000	300,000	300,000	325,000	325,000	350,000	390,000	430,000
Bond interest (7 percent).....	1,347,000	2,320,000	2,100,000	1,760,000	1,400,000	1,050,000	690,000	310,000
Expenses.....	76,000	70,000	66,000	61,000	41,000	66,000	71,000	76,000
(Percent).....	(7)	(14)	(18)	(24)	(30)	(40)	(43)	(55)
Dividends.....	190,000	760,000	1,000,000	1,320,000	1,650,000	2,100,000	2,365,000	3,050,000
Amortization.....	5,350,000	3,250,000	4,800,000	5,000,000	5,050,000	5,200,000	5,450,000	4,400,000
Total.....	7,413,000	6,700,000	8,266,000	8,466,000	8,466,000	8,766,000	8,966,000	9,266,000
Capital stock.....	5,500,000	5,500,000	5,500,000	5,500,000	5,500,000	5,500,000	5,500,000	5,500,000
Surplus.....	0	5,350,000	8,600,000	13,400,000	18,400,000	23,450,000	28,650,000	34,100,000
Total.....	5,500,000	10,850,000	14,100,000	18,900,000	23,900,000	28,950,000	34,150,000	39,600,000
7 percent on capital and surplus.....	385,000	760,000	987,000	1,323,000	1,673,000	2,016,500	2,390,050	2,772,000

End of 1930:

Capital..... \$5,500,000
 Surplus..... 38,500,000

Includes value (book) G. M. shares, \$15 to \$30 per share, 2,933,334 shares at \$15..... 44,000,000

Total..... 88,000,000

Increase on original \$5,500,000 investment—16 times.

Dividends received from 1923 to 1930—\$12,465,000 equal 226 percent on \$5,500,000 investment.

Annual income thereafter with G. M. common dividends at \$2 per share, \$5,866,000, equals 107 percent on investment of \$5,500,000.

MANAGER SECURITIES CO.

Year	Bonds	Amortized	Balance	Interest
1923.....	\$38,500,000	\$5,350,000	\$33,150,000	\$1,347,000
1924.....	33,150,000	3,250,000	29,900,000	2,320,000
1925.....	29,900,000	4,800,000	25,100,000	2,100,000
1926.....	25,100,000	5,000,000	20,100,000	1,750,000
1927.....	20,100,000	5,050,000	15,050,000	1,400,000
1928.....	15,050,000	5,200,000	9,850,000	1,050,000
1929.....	9,850,000	5,450,000	4,400,000	690,000
1930.....	4,400,000	4,400,000	0	310,000

NOTE.—“GMC 1593” is written at the bottom of the first page and “GMC 1593A” at the bottom of the remaining pages. *Italics indicate handwriting.*

Senator O'MAHONEY. This would indicate that the Managers Securities Corp. purchased the 7½ million shares of the General Motors common stock of no par value—

Mr. HARRIS. That is right.

Senator O'MAHONEY. On the basis of a payment by the Managers Securities Co. of \$4,700,000 in cash and \$32,800,000 in 7-percent notes maturing April 1, 1931, as thereafter recited.

What was the source of the cash payment of \$4,700,000?

Mr. HARRIS. That I do not know, sir.

Oh, I think undoubtedly it was the sale of stock, probably the initial payment on the stock, that they were to sell, to the beneficiaries. I am not too clear, but I think that was it.

Senator O'MAHONEY. You mean that the beneficiaries paid——

Mr. HARRIS. They paid an initial payment; I know that was paid.

Mr. McHUGH. Mr. Harris, do you know——

Mr. HARRIS. Excuse me; there was a slight change in this. The figures were slightly different when it was finally put into effect. Their stock was divided into class A and class B stock. The class B stock, I think, was \$15, and the class A stock, as I remember, was something like \$200 a share.

The \$15 stock received dividends on each share—received dividends on 45 shares of General Motors stock.

Mr. McHUGH. Mr. Harris, do you know what the approximate amount of the downpayment was to be by the Managers who obtained this stock?

Mr. HARRIS. Will you excuse me a minute; I think I may have something on that in my—I do not see my notes for the minute, Mr. McHugh; it is in my briefcase. Maybe you ought to pass the question for the minute, and I will get it later.

Mr. McHUGH. Do I understand the bulk of the purchase price was to be paid out of dividends?

Mr. HARRIS. Yes; it could be; I do not say it had to be, but it could be. The dividends they were getting, you understand, would permit that.

Mr. McHUGH. Are there any other details of the plan, Mr. Harris, that you would like to elaborate upon?

Mr. HARRIS. Well, committee exhibit 7 shows the selection of the persons who were benefited by this.

(Committee exhibit 7, previously referred to, follows:)

GOVERNMENT'S EXHIBIT No. 843

(Government Exhibit 259. In the District Court of the United States, Northern District of Illinois, Eastern Division. Before La Buy, J.
Harry A. Harnden, Official Court Reporter)

SCHEDULE F. Interrogatory 7 (a) and 7 (b). Managers Securities Company. (All stock was purchased from General Motors Corporation and was paid for in cash.)

Name	Position	Date	Class A stock purchased		Class B stock purchased	
			Number of shares	Price per share	Number of shares	Price per share
George G. Allen.....	General purchasing agent, Buick.....	November 1923.....	200	\$100.00	200	\$25.00
B. H. Aubad.....	Chief engineer, Oakland.....	July 1926.....	120	211.23	120	673.34
R. T. Armstrong.....	General manager, Armstrong Spring.....	December 1924.....	200	146.54	200	25.00
Charles F. Barth.....	General manager, Flint plant, Chevrolet.....	November 1923.....	240	100.00	240	25.00
H. H. Bassett.....	Vice president in charge of manufacturing, Chevrolet.....	May 1925.....	80	130.98	80	25.00
Henry L. Barton.....	General manager, Buick.....	April 1924.....	2,400	100.00	2,400	25.00
Eric L. Berglund.....	Director of Factory Section, advisory staff.....	November 1923.....	320	100.00	320	25.00
Elmer G. Blechler.....	Executive secretary, power and construction section, advisory staff.....	April 1925.....	200	100.00	200	25.00
	Acting general manager, Delco Light.....	January 1924.....	200	141.13	80	25.00
	General manager, Delco Light.....	May 1925.....	120	130.98	120	25.00
	do.....	July 1926.....	80	211.23	80	673.34
Ferdinand A. Bower.....	Assistant chief engineer, Buick.....	November 1923.....	200	100.00	200	25.00
A. Bradley.....	do.....	June 1925.....	120	130.98	120	25.00
A. J. Brault.....	Assistant treasurer.....	February 1925.....	200	123.04	200	25.00
Donaldson Brown.....	Production manager, Oakland.....	July 1926.....	120	211.23	120	673.34
	Vice president in charge of financial staff.....	November 1923.....	1,200	100.00	1,200	25.00
A. L. Cash.....	do.....	May 1925.....	400	130.98	400	25.00
H. Winfield Chapin.....	General manager, Northway.....	November 1923.....	200	100.00	200	25.00
W. A. Christ.....	General manager, Brown-Lipe-Chapin.....	do.....	200	100.00	200	25.00
Samuel H. Cook.....	Chief Engineer, Dayton Engineering Laboratory.....	do.....	200	100.00	200	25.00
Curtis C. Cooper.....	Assistant general manager, Brown-Lipe-Chapin.....	do.....	200	100.00	200	25.00
M. E. Coyle.....	President, General Motors Acceptance Corp.....	do.....	480	100.00	480	25.00
	Controller, Chevrolet.....	do.....	200	100.00	200	25.00
C. E. Dawson.....	Assistant to president, Chevrolet.....	May 1925.....	80	130.98	80	25.00
Clarence M. Day.....	Assistant general sales manager, Chevrolet.....	November 1923.....	200	100.00	200	25.00
W. L. Day.....	General manager, Maxon Sales Products.....	do.....	200	100.00	200	25.00
A. L. Deane.....	General manager, General Motors Truck.....	do.....	400	100.00	400	25.00
	Vice president, General Motors Acceptance Corp.....	do.....	200	100.00	200	25.00

See footnote at end of table.

SCHEDULE F. Interrogatory 7 (a) and 7 (b), Managers Securities Company. (All stock was purchased from General Motors Corporation and was paid for in cash).—Continued

Name	Position	Date	Class A stock purchased		Class B stock purchased	
			Number of shares	Price per share	Number of shares	Price per share
Enos A. DeWaters.....	Chief engineer, Buick.....	November 1923.....	200	\$100.00	200	\$25.00
H. C. Dunning.....	Assistant general manager, Oldsmobile.....	May 1925.....	120	150.98	120	25.00
C. B. Durham.....	Assistant general manager, Buick.....	November 1923.....	200	100.00	200	25.00
John H. Dwight.....	General manager, Saginaw Products.....	do.....	400	100.00	400	25.00
D. S. Eddins.....	General sales manager, Oldsmobile.....	do.....	280	100.00	280	25.00
A. J. Fisher.....	Member of executive committee, Fisher Body.....	May 1925.....	200	150.98	200	25.00
Charles T. Fisher.....	Director and member of executive committee.....	November 1924.....	600	100.00	600	25.00
E. F. Fisher.....	Member of executive committee, Fisher Body.....	do.....	1,720	100.00	1,720	25.00
Fred J. Fisher.....	Director and member of executive committee.....	do.....	1,600	100.00	1,600	25.00
Lawrence P. Fisher.....	do.....	do.....	1,720	100.00	1,720	25.00
W. A. Fisher.....	General manager, Cadillac.....	do.....	880	100.00	880	25.00
Thomas B. Fordham.....	President, Fisher Body.....	May 1925.....	400	150.98	400	25.00
Homer J. Forsythe.....	Factory superintendent and works manager, Delco Light.....	November 1924.....	880	100.00	880	25.00
A. R. Glancy.....	General manager, Hyatt Roller Bearing.....	January 1924.....	200	141.13	200	25.00
Richard H. Grant.....	General manager, Oakland.....	November 1923.....	200	100.00	200	25.00
A. B. C. Hardy.....	do.....	February 1925.....	400	129.04	400	25.00
Herbert C. Harrison.....	General manager, Delco Light.....	July 1926.....	200	211.23	200	673.34
Omar L. Harrison.....	Assistant to president, Chevrolet.....	November 1923.....	400	100.00	400	25.00
George H. Hannum.....	General manager, Oldsmobile.....	do.....	800	100.00	800	25.00
A. Lawrence Haskell.....	Sales manager, Dayton Engineering Laboratory.....	do.....	400	100.00	400	25.00
E. C. Howard.....	General manager, Oakland.....	November 1923.....	200	100.00	200	25.00
O. E. Hunt.....	General manager, General Motors Export.....	do.....	200	100.00	200	25.00
J. B. Jackson.....	Assistant to president, Cadillac.....	April 1925.....	120	150.98	120	25.00
E. F. Johnson.....	Chief engineer, Chevrolet.....	November 1923.....	200	100.00	200	25.00
W. H. Johnson.....	Staff manager, general services.....	do.....	120	150.98	120	25.00
Kaufman T. Keller.....	Group executive, inter-company parts division.....	November 1923.....	200	100.00	200	25.00
C. F. Kettering.....	Assistant to group executive, accessory divisions.....	April 1925.....	200	150.98	200	25.00
Bernard G. Koether.....	Managing director, General Motors, Ltd.....	November 1923.....	240	100.00	240	25.00
Ralph S. Lane.....	Manager of manufacture, Chevrolet.....	do.....	400	100.00	400	25.00
A. N. Lawrence.....	President, General Motors Research.....	do.....	1,200	100.00	1,200	25.00
Gordon LeFebvre.....	Vice president in charge of manufacture, Chevrolet.....	do.....	1,200	100.00	1,200	25.00
Robert T. Longway.....	Director of sales section, advisory staff.....	do.....	200	100.00	200	25.00
James Lynah.....	President, United Motors Service.....	do.....	200	100.00	200	25.00
James McEvoy.....	Sales director, General Motors, Ltd.....	do.....	144	100.00	144	25.00
R. S. McLaughlin.....	General manager, General Motors of Canada, Ltd.....	July 1926.....	160	211.23	160	673.34
	Assistant treasurer, Buick.....	November 1923.....	200	100.00	200	25.00
	Executive secretary, general purchasing commission.....	March 1925.....	200	150.98	200	25.00
	Director of patent section.....	February 1925.....	200	146.54	200	25.00
	President, General Motors of Canada, Ltd.....	November 1923.....	600	100.00	600	25.00

Lynn McNaughton.....	Sales manager, Cadillac	do	320	100.00	320	25.00
Harvey J. Mallory.....	Comptroller, Buick	do	200	100.00	200	25.00
C. W. Matheson.....	General sales manager, Oakland	July 1926	120	211.23	120	673.34
Thomas Midgley, Jr.....	Vice president, general motor chemical	November 1923	200	100.00	200	25.00
J. D. Mooney.....	Vice president in charge of export operations	do	320	100.00	320	25.00
	do	do	80	100.00	80	25.00
G. D. Moore.....	General manager, Toledo plant, Chevrolet	December 1924	120	100.00	120	25.00
Charles Stewart Mott.....	Vice president in charge of car and truck group	do	2,400	100.00	2,400	25.00
C. J. Nepher.....	General sales manager, Oakland	May 1924	200	141.13	200	25.00
Don P. O'Keefe.....	Purchasing agent, Chevrolet	November 1923	120	100.00	120	25.00
	do	May 1925	80	150.98	80	25.00
E. M. Orr.....	Assistant general manager, Oakland	November 1923	200	\$100.00	200	\$25.00
DeWitt Page.....	General manager, New departure	do	800	100.00	800	25.00
James Parkhill I.....	General manager, Armstrong Spring	December 1928	25	(¹)	25	(¹)
G. H. Pessley.....	Sales manager, Olds Motor Works	April 1924	200	141.13	200	25.00
John L. Pratt.....	Group executive in charge of accessory divisions	November 1925	800	100.00	800	25.00
	do	January 1925	400	100.00	400	25.00
	do	May 1925	400	150.98	400	25.00
	do	November 1923	200	100.00	200	25.00
M. L. Prentiss.....	Treasurer	do	200	100.00	200	25.00
Ernest W. Proctor.....	Assistant comptroller	do	2,400	100.00	2,400	25.00
J. J. Raskob.....	Chairman, finance committee	do	400	100.00	400	25.00
I. J. Reuter.....	General manager, Remy Electric	do	200	15 ¹ / ₂ 98	200	25.00
H. H. Rice.....	General manager, Oldsmobile	February 1925	800	100.00	800	25.00
E. C. Riley.....	General manager, Cadillac	November 1923	200	150.98	200	25.00
Coleman J. Ross.....	Managing director, General Motors, Ltd	March 1925	200	100.00	200	25.00
L. M. Rumely.....	General superintendent, Buick	November 1923	200	100.00	200	25.00
John J. Schumann, Jr.....	General manager, General Motors Export	August 1925	120	150.98	120	25.00
John M. Scott.....	Vice president, General Motors Acceptance Corp	November 1923	320	100.00	320	25.00
Ernest W. Seaholm.....	Manufacturing engineer, Oldsmobile	do	200	100.00	200	25.00
	Chief engineer, Cadillac	do	100	100.00	100	25.00
	do	May 1925	100	150.98	100	25.00
Livingson L. Short.....	Vice president, GEC	November 1923	200	100.00	200	25.00
Alfred P. Sloan, Jr.....	President	do	2,800	100.00	2,800	25.00
	do	May 1925	400	150.98	400	25.00
John T. Smith.....	General counsel	do	200	100.00	200	25.00
Chester A. Souther.....	Advisory staff, in charge income taxes	do	200	100.00	200	25.00
D. M. Spaidal.....	Vice president, General Motors Acceptance Corp	do	200	100.00	200	25.00
W. R. Strickland.....	Assistant chief engineer, Cadillac	do	100	150.98	100	25.00
A. H. Swayne.....	Vice president	May 1925	200	150.98	200	25.00
David O. Thomas.....	General manager, Muncie Products	March 1925	100	150.98	100	25.00
Frank Turner.....	Comptroller	May 1925	200	100.00	200	25.00
E. W. Webb.....	General attorney	do	200	100.00	200	25.00
W. S. Whitaker.....	General manager, Inland Manufacturing	July 1926	80	211.23	80	673.34
A. V. Widman.....	Manager of manufacturing, Cadillac	November 1923	320	100.00	320	25.00
Charles E. Wilson.....	Factory manager, Remy Electric	do	200	100.00	200	25.00
	General manager, Remy Electric	April 1925	120	150.98	120	25.00
H. G. Zimmerman.....	Regional manager, General Motors export	August 1925	120	150.98	120	25.00

¹ Mr. R. T. Armstrong, general manager, Armstrong Spring Division, in December 1928 transferred, with the consent of General Motors Corp., to his successor in that capacity, Mr. James Parkhill, one-half his holdings of Managers Securities Co., stock, namely

25 shares of class A stock (after reflecting redemptions of 150 shares of his original holdings of Managers Securities Co., and 100 shares of class B stock.

Mr. HARRIS. This shows the class of executives who received stock. It shows, for instance, that Mr. Sloan, the president, received 28,000 shares of class A at \$100 a share, that was the price; and 28,000 shares of class B at \$25 a share; and in that connection we have a letter, committee exhibit 8, a letter of Mr. Raskob of August 7, 1929, in which he asks the Managers Securities Co. to buy his stock and sets up the figure that he things the stock is worth. He says:

For example, my rough figures show the Managers Securities Co. B stock worth about \$341 million with General Motors valued at \$80 per share. My proportion is 6 percent or about \$20,460,000. Deducting \$500,000 would leave \$19,960,000 to be paid to me in General Motors common stock at \$80 per share.

(The documents previously referred to follow:)

(Government Exhibit 262. In the District Court of the United States, before Northern District of Illinois, Eastern Division, La Buy, J. Harry A. Harnden, Official Court Reporter)

7 AUGUST 1929.

Copy to Irénée du Pont, Lammot du Pont, Henry du Pont, H. G. Haskell, Walter S. Carpenter, Jr., M. D. Fisher.

GENERAL MOTORS SECURITIES COMPANY,
Wilmington, Delaware.

GENTLEMEN: I wrote to the General Motors Corporation suggesting that that Corporation purchase my Managers Securities Company stock paying me therefor in General Motors Corporation common stock. In my letter I said:

"For example my rough figures show the Managers Securities Company B stock worth about \$341,000,000 with General Motors valued at \$80 per share. My proportion is six per cent or about \$20,460,000. Deducting \$500,000 would leave \$19,960,000 to be paid to me in General Motors common stock at \$80 per share."

The Finance Committee of the General Motors Corporation felt that it was not advisable to do this unless the Corporation was in position to make a similar offer to the other Managers Securities Company stockholders, as it was felt important to treat everyone alike. Discussion developed the fact that if the du Pont Company was willing to dissolve the General Motors Securities Company, delivering its assets consisting wholly of General Motors Corporation common stock to the stockholders, then the du Pont Company and the Managers Securities Company would both hold common stock of the General Motors Corporation and the Managers Securities Company would then be in a position to deliver General Motors stock to its stockholders, should they so desire.

If it is the intention of the du Pont Company to agree to a dissolution of the General Motors Securities Company at the end of 1930 when the Managers Securities Company contract with General Motors terminates then it would seem to the advantage of the du Pont Company or the General Motors Securities Company to consider the purchase of my Managers Securities Company stock which I am willing to sell on the basis offered to the General Motors Corporation.

During the past fourteen years I have devoted my best efforts to the General Motors Corporation and tried in every way possible to do my part in making it a success, and while connected with it was perfectly willing to have practically my entire fortune invested in it. But now that I am no longer an active partner engaged with those responsible for shaping the policies and carrying on the management of the Corporation, I feel it unwise to have such a large portion of my total fortune tied up in the Managers Securities Company which accounts for my anxiety to convert this stock into a security that will enable me to have a marketable security both for collateral purposes and for sale at such time in the future as it may seem to me desirable to reduce the large investment I have in this one security.

I sincerely hope that this will receive most sympathetic consideration as certainly it is not constructive to be forced to remain in a partnership of which I am no longer a part.

Very truly yours,

(s) JOHN J. RASKOB.

NOTE.—“Received Aug. 8—1920 Lamot du Pont” is stamped at the top of the first page. “GMC-530b” is written at the bottom of each page.

Senator O'MAHONEY. This is my first opportunity to look over this document, Mr. Harris.

Mr. HARRIS. Certainly, of course.

Senator O'MAHONEY. It is not clear to me whether or not the executives originally received stock in General Motors or in the Managers Securities Co.

Mr. HARRIS. I think it was the Managers Securities Co. because Raskob is offering his Managers Securities B stock, so I think it was in Managers Securities Co.

Senator O'MAHONEY. Well, let us read paragraph 4 on page 4 of exhibit 6. This is the Brown-Raskob plan.

The General Motors Corp. will create the Managers Securities Co. under Delaware laws and will subscribe and pay in its entire capital of \$5,500,000 common stock and will then cause the Managers Securities Co. to purchase 200,000 shares of General Motors Securities Co. common stock for \$37,500,000—

and that purchase, I take it, was the purchase or the part purchase of the stock which the Du Ponts were willing to sell in order to——

Mr. HARRIS. That is right, sir.

Senator O'MAHONEY. Get their total holdings down from 35 percent?

Mr. HARRIS. 38 percent; from 38 to 23.8.

Senator O'MAHONEY. From 38 to 23.8?

Mr. HARRIS. That is right, sir.

Senator O'MAHONEY. Then the fifth paragraph states:

In order to further carry out the intent and purpose of this plan in a still more substantial manner, Mr. Pierre S. Du Pont is ready to sell 433,334 shares of General Motors Corp. common stock to the Managers Securities Co. at \$15 a share, aggregating a total of \$6,500,000 taking in payment therefore \$800,000 in cash and \$5,700,000, 7 percent 8-year notes of the Managers Securities Co. heretofore referred to.

Mr. HARRIS. And holding in the meanwhile the General Motors stock as collateral and voting the General Motors stock.

Senator O'MAHONEY. But the price there was \$15 a share?

Mr. HARRIS. That is right, sir.

Senator O'MAHONEY. To this new corporation; and the price which Mr. Raskob got after——

Mr. HARRIS. Well, he asked for it.

Senator O'MAHONEY. He asked for it; yes.

Mr. HARRIS. Well, he had that figure, I think, of——

Senator O'MAHONEY. \$80 per share?

Mr. HARRIS. Yes. It was valued—no, General Motors was at \$80.

Senator O'MAHONEY. General Motors stock?

Mr. HARRIS. Yes, sir.

His underlying Managers Securities shares represented General Motors stock to the value, as he considered it, of \$20 million.

I might say, Senator, that my notes show and, perhaps, I ought to call your attention to, the fact that there was a slight change in the plant as finally approved. I am taking this now from our trial brief. The Managers Securities Co. took 30 percent of the stock, which was a little less, 2,250,000 shares, instead of 33, which is $2\frac{1}{2}$ million, at \$33,750,000, with other detailed changes.

The Managers Securities Co. took 30 percent of the stock, which was a class A stock at a par value of \$100 a share, and 50,000 shares of class B stock at \$25 a share. Class B stock received the dividends on 2,250,000 shares of underlying GM stock, so that each share received dividends on 45 shares of GM common. In 1923 these 45 shares, it is said, which were bought for \$25, the lot, were worth \$675; that was one share of class B, meaning 45 shares of GM. The purchaser put up one-seventh of the price in cash and could pay the balance out of dividends on his stock.

That was the statement we made.

Senator O'MAHONEY. Mr. McHugh?

Mr. McHUGH. Mr. Harris, would any of these documents then show the interest of the various Du Pont personnel or the position which they held in General Motors Corp.?

Mr. HARRIS. Yes. I call your attention to committee exhibit 9, which is a chart known as trial exhibit 2, showing the positions of the 3 Du Pont brothers in the Du Pont Co., General Motors, Christiana, and Delaware.

I do not think the Senator is interested in Christiana and Delaware, but he is interested in Du Pont.

Senator O'MAHONEY. I would like to have the record show a definition of Christiana. I know what it was.

Mr. HARRIS. Yes.

Senator O'MAHONEY. Let the record show what it is.

Mr. HARRIS. Christiana Co. was a family holding company which held the shares of the Du Pont family in the Du Pont Co.

Delaware was another family holding company created at the time that Mr. Pierre du Pont, who had no direct heirs, was disposing, in a fashion, of his holdings in the Du Pont Co. or in Christiana, and receiving in return an annuity for himself and his wife, to be paid out of Delaware, of \$900,000 a year. That was to last for the rest of their lives, and in the meantime a division or distribution of the stock was made.

Coming back to the other companies, this chart shows that for a long period of time, roughly from 1919 to 1940, Pierre du Pont was chairman of the board of the Du Pont Co., and that from 1917 to 1929 he was chairman of the board of General Motors.

He was during all, almost all of the period covered by the chart, from 1917 to 1949, a director and member of the finance committee of the Du Pont Co.; and from 1917 to 1944 a director of General Motors and a member of the finance committee from 1917 to 1937.

Irénée du Pont has lesser jobs but similar connections; that is, he was director of General Motors and a director of the Du Pont Co. He was also a member of the finance committee of General Motors, and for a long time vice chairman of the board, director, and a member of the finance committee.

Mr. McHUGH. Mr. Harris, do you have any tabulation showing the percentage of Du Pont-voted shares of General Motors common stock, the total shares of the General Motors common represented at the General Motors stockholders' meetings over the years?

Mr. HARRIS. Yes; we do.

This is your committee exhibit 10, Government trial exhibit 1307, and it is a statement of the Du Pont stock voting at the General Motors stockholding meetings from the year 1928 to the year 1949.

It shows that a total amount of outstanding stock that could be voted, the shares they were entitled to vote at stockholders' meetings, and the total shares that were represented at each meeting in person or by proxy, and it also shows the percentage of Du Pont-covered shares of GM common to the total shares of GM common represented at the meetings.

From the beginning in 1928, which was the beginning of this chart, the percentage was 52.3.

It ran down 52, 51, 51, 49, 41, 49, 51, 46, 39, 38, 36, 35, 38, 33, 34, 33, 31, and in 1949 it was 29.9, the lowest that they had had it.

(The document referred to follows:)

GOVT. TRIAL EX. No. 1307

Du Pont stock at General Motors stockholders meetings

Dec. 31	Number of shares of General Motors common stock entitled to be voted by Du Pont Corp. ¹	Shares of common stock of General Motors entitled to vote at stockholders meetings ²	Total shares of common stock represented by person or proxy at General Motors stockholders meetings ²	Percent of Du Pont-voted shares of General Motors common to total shares of General Motors common represented at General Motors stockholders meetings
1928.....	5,679,988	17,166,437	10,864,889	52.3
1929.....	14,199,970	43,054,263	27,243,665	52.1
1930.....	13,766,151	42,499,061	26,904,439	51.1
1931.....	13,743,020	43,464,504	28,829,146	51.2
1932.....	13,473,768	43,257,181	26,348,140	51.1
1933.....	12,558,371	43,083,180	25,267,702	49.7
1934.....	12,284,302	42,957,167	29,959,707	41.0
1935.....	12,036,779	42,890,470	24,237,343	49.6
1936.....	11,967,241	42,913,685	23,310,647	51.3
1937.....	11,910,837	42,622,921	25,596,400	46.5
1938.....	10,000,000	42,744,191	25,218,526	39.6
1939.....	10,000,000	43,125,896	25,993,358	38.4
1940.....	10,000,000	42,931,118	27,287,303	36.6
1941.....	10,000,000	43,149,682	28,320,510	35.3
1942.....	10,000,000	43,254,016	27,787,273	35.9
1943.....	10,000,000	43,336,029	26,241,219	38.1
1944.....	10,000,000	44,001,134	29,651,142	33.7
1945.....	10,000,000	43,099,126	29,200,881	34.2
1946.....	10,000,000	44,021,769	30,268,519	33.0
1947.....	10,000,000	44,075,690	31,565,907	31.6
1948.....	10,000,000	44,012,652	32,247,058	31.0
1949.....	10,000,000	43,988,717	33,371,974	29.9

¹ Source: Annual reports of Du Pont Corp. to its stockholders. This figure includes General Motors common stock held directly by Du Pont Corp. and by General Motors Securities Corp., the stock of which was initially owned 70 percent by Du Pont Corp. and later the common stock of which was owned 100 percent by Du Pont Corp.

² Source: Answers dated Feb. 1, 1952, of General Motors Corp. to plaintiff's interrogatories.

NOTE.—This table does not purport to consider the holdings of Pierre S. du Pont, Lamont du Pont, Irénée du Pont, and Christiana Securities Co., in common stock, of General Motors.

Mr. McHUGH. Mr. Harris, in addition to the stock which was actually owned by the Du Ponts, will you explain what stock was controlled by the Du Ponts to give it the percentage of voting control that is shown in this last column.

Mr. HARRIS. I do not know that there was any—I do not know from this chart that this was anything more than the Du Pont shares. Are you talking about friends of Du Pont?

Mr. McHUGH. Yes.

Mr. HARRIS. I do not know——

Mr. McHUGH. Does this reflect that?

Mr. HARRIS. I do not think so.

Senator O'MAHONEY. I call attention to the fact that the note at the bottom say:

This table does not purport to consider the holdings of Pierre S. Du Pont, Lamont Du Pont, Irénée Du Pont—

Mr. HARRIS. That is right.

Senator O'MAHONEY (continuing):

and Christiana Securities Co. in common stock of General Motors.

Mr. HARRIS. That is right.

This figure includes General Motors common stock held directly by Du Pont Corp.

Senator O'MAHONEY. So that actually considering the holdings, the personal holdings, of the three Du Pont brothers and the holdings of the family, through Christiana Securities Co., the percentage of stock under control of the Du Pont family is considerably greater than that voted by the Du Pont Co.

Mr. HARRIS. Could we say in friendly hands rather than controlled, sir?

Senator O'MAHONEY. I will; yes. I accept your definition.

The Du Pont Co. is a corporation, an artificial person, but it nevertheless is controlled by the same Du Ponts?

Mr. HARRIS. It is controlled by the Du Ponts, I think that was established; that is the Du Pont Co.

Mr. McHUGH. Mr. Harris, will you explain what is the significance of committee's exhibit No. 11?

Mr. HARRIS. Committee exhibit No. 11 is a table which is known as Government exhibit No. 1309, of the positions held by a number of people, Du Ponts, Du Pont executives, and so forth, in the Du Pont Co., General Motors Co., and Wilmington Trust Co., that is, in many cases held at the same time, simultaneously.

This gives the dates that they held their directorships or other office, president, whatever it was, and also shows what other offices they were holding at the same time.

Pierre, for instance, was president of Du Pont and also chairman of the board of General Motors, and so forth.

Senator O'MAHONEY. What is the significance of Wilmington?

Mr. HARRIS. Wilmington Trust Co. is a company which, it was established, held certain stock in trust, and I think it is the Wilmington referred to that I was mentioning to the Senator early in the case. I believe the——

Senator O'MAHONEY. Is it a State bank?

Mr. HARRIS. Well, that I cannot say, sir. It is Wilmington Trust Co., which is the name. I do not know its charter.

Senator O'MAHONEY. Well, it is apparently not a national bank.

Mr. HARRIS. It does not have it in the name, sir.

Senator O'MAHONEY. Yes.

(The document referred to follows:)

GOVT. TRIAL EX. No. 1309

SUMMARY OF DIRECTORSHIPS AND OTHER OFFICIAL POSITIONS HELD BY INDIVIDUAL DEFENDANTS AND CERTAIN OTHER INDIVIDUALS IN DEFENDANT CORPORATIONS

Allen, William P. (deceased):

Du Pont: Director, 1927-41; vice president, 1928-31; executive committee, 1928-29

United States Rubber: Director, 1936-40

Barksdale, H. M. (deceased):

Du Pont: Director, 1916-18; finance committee, 1916-18; vice president, 1915-18

General Motors: Director, June to November 1918; finance committee, June to November 1918

Wilmington: Director, 1912-19

Brown, Donaldson:

Du Pont: Director, 1918 to date; finance committee, 1920 to date; executive committee, 1918-21

General Motors: Director, 1920-46; vice chairman, 1937-46; vice president, 1920-42; financial policy committee, 1946 to date; administration committee, 1942-45; policy committee, 1937-46; executive committee, 1924-37; finance committee, 1921-37 (chairman, 1929-37)

Wilmington: Director, 1918-21

Brown, H. Fletcher:

Christiana: Director, 1934-44; vice president, 1935-44

Du Pont: Director, 1915-44; finance committee, 1919-21; executive committee, 1915-19 and 1921-30

Carpenter, R. R. M. (member of the Du Pont family) (deceased):

Christiana: Director, 1915-49

Delaware: Director, 1927 to August 1943 and June 1944 to 1945; president, 1943

Du Pont: Director, 1915 to date; finance committee, 1919-21; executive committee, 1915-19 and 1925-31

Carpenter, W. S., Jr.:

Christiana: Director, 1948 to date

Du Pont: Director, 1919 to date; chairman, January 1948 to date; president, 1940 to January 1948; finance committee, 1921 to date; executive committee, 1919 to January 1948

General Motors: Director, 1927 to date; financial policy committee, 1946 to date; policy committee, 1937-46; finance committee, 1927-37

Wilmington: Director, 1921 to date

Copeland, Charles (member of the Du Pont family):

Delaware: Director, 1927-37; president, 1927-37

Du Pont: Director, 1921-42

United States Rubber syndicate member

Wilmington: Director, 1926-34

Copeland, Lammot du Pont (member of the Du Pont family):

Christiana: Director, 1940 to date; vice president, 1944 to date

Delaware: Director, 1937 to date

Du Pont: Director, 1942 to date; finance committee, 1943 to date

General Motors: Director, 1944 to date

United States Rubber syndicate member

United States Rubber: Director, 1940-46

Wilmington: Director, 1943 to date

Du Pont, Pierre S.:

Christiana: Director, 1915 to date; president, 1915 to date

Du Pont: Director, 1915 to date; chairman, 1919-40; president, 1915-19; finance committee, 1915 to date

General Motors: Director, 1917-44; chairman, 1917-29; executive committee, 1921-29; finance committee, 1917-37

United States Rubber syndicate member

Wilmington: Director, 1903-20 and 1924 to date; vice president, 1903-35; honorary chairman, 1935 to date

Du Pont, Irénée:

Christiana: Vice president, 1915-41; director, 1915 to date

Delaware: Director, 1927-37

- Du Pont: Director, 1915 to date; president, 1919-26; finance committee, 1915-46; executive committee, 1915-19 and 1921-26
 General Motors: Director, 1918-38; finance committee, 1918-37
 United States Rubber syndicate member
 Wilmington: Director, 1919-32
- Du Pont, Lammot (deceased):**
 Christiana: Vice president, 1923 to date; director, 1915 to date
 Delaware: Director, 1927-43; president, 1937-43
 Du Pont: Director, 1915 to date; chairman, 1940 to January 1948; president, 1926-40; finance committee, 1918-45; executive committee, 1915-40
 General Motors: Director, 1918-46; chairman, 1929-37; policy committee, 1937-46; executive committee, 1930-34; finance committee, 1918-37
 United States Rubber syndicate member
 Wilmington: Director, 1917 to date
- Du Pont, H. F.:**
 Du Pont: Director, 1915 to date; finance committee, 1916-43
 General Motors: Director, 1918-44; finance committee, 1918-37
 United States Rubber syndicate member
 Wilmington: 1919 to date
- Du Pont, Henry Belin (member of the Du Pont family):**
 Christiana: Director, 1928-34; 1940 to date; secretary, 1929-34; vice president, 1944 to date
 Delaware: President, 1943 to date; director, 1927-34 and 1939 to date
 Du Pont: Director, 1934 to date
 General Motors: Director, 1938 to date
 United States Rubber syndicate member
 Wilmington: Director, 1927-34 and 1937 to date
- Du Pont, Lammot, Jr. (member of the Du Pont family):**
 Wilmington: Assistant secretary, 1937-42 and 1946 to January 1947; assistant treasurer, January 1947 to date
- Du Pont, Pierre S., III (member of the Du Pont family):**
 Delaware: Director, 1943 to date
- Du Pont, S. Hallock (member of the Du Pont family):**
 Delaware: Director, 1927 to date
- Darden, Colgate, Jr. (member of the Du Pont family):**
 United States Rubber: Director, 1946-48
- Davis, F. B., Jr.:**
 Du Pont: Director, 1927-42
 United States Rubber: Director, 1929-48; chairman, 1929-48; president, 1929-42
- Davis, Henry:**
 Personal secretary to Irénée du Pont
 Christiana: Assistant secretary, 1938 to date; assistant treasurer, 1937 to date; vice president, 1920-21
 United States Rubber syndicate member
 United States Rubber: Director, 1928-48
- Dean, J. Simpson (member of the Du Pont family), Wilmington:**
 Director, 1931-43 and 1946 to date
- Echols, Angus B.:**
 Du Pont: Director, 1927 to date; finance committee, 1929 to date
 General Motors: Director, 1944 to date; financial policy committee, 1947 to date
 Wilmington: Director, 1926-34
- Edmonds, George P. (member of the Du Pont family):**
 United States Rubber: Director, 1944-48
 Wilmington: Director, 1943 to date; president, 1948 to the present time
- Greenewalt, Crawford H. (member of the Du Pont family):**
 Christiana: Director, 1944 to date
 Du Pont: Director, 1942 to date; president, January 1948 to the present time; finance committee, January 1948 to date
- Humphreys, H. E., Jr.:**
 Christiana: Secretary, 1934-38; assistant secretary, 1930-35
 Delaware: Secretary, 1934-38
 United States Rubber: Director, 1938-48; vice president, 1938-48; president at the present time
- Harrington, W. F.:**
 Du Pont: Director, 1927 to date
 Wilmington: Director, 1931-34 and 1939 to date

Haskell, J. A. (deceased) :

Du Pont: Director, 1915-2; vice president, 1915-23

General Motors: Director, 1917-23; vice president, 1918-23; executive committee, 1918-23; finance committee, 1918-23

Laird, W. W., Sr. (member of the Du Pont family) (deceased) :

Delaware: Director, 1927

United States Rubber syndicate member

Wilmington: Director, 1910-27

Laird, W. W., Jr., member of the Du Pont family: Delaware: director, 1934 to date

May, Ernest N., member of the Du Pont family: Delaware: director, 1937 to date

Pratt, John L.:

General Motors: Director, 1923 to date; vice president, 1922-37; financial policy committee, 1946 to date; executive committee, 1924-37

United States Rubber: Director, 1937-42

Raskob, J. J. (deceased) :

Christiana: Director, 1915 to date

Du Pont: Director, 1915-46; financial committee, 1915-44; executive committee, 1915-18

General Motors: Director, 1917-46; vice president, 1918-29; executive committee, 1921-28; finance committee, 1917 to August 1928 and May 1929 to 1937

Wilmington: Director, 1909-18

Sharp, H. R., member of the Du Pont family:

Christiana: Vice president, 1915-16

Delaware: 1927 to February 1942 and November 1942 to 1946, director

Sharp, H. R., Jr., member of the Du Pont family: Delaware: Director, February 1942 to November 1942 and 1946 to date

Sloan, Alfred P., Jr.:

Du Pont: Director, 1923 to date

General Motors: Director, 1918 to date; chairman, 1937 to date; president, 1923-37; financial policy committee, 1946 to date; administration committee, 1937-45; policy committee, 1937-46; executive committee, 1918-37; finance committee, 1922-37

Tallman, Frank G. (deceased) :

Du Pont: Director, 1916-38

Wilmington: Director, 1929-34 and 1936-38

CORRECTIONS

Page 1, William P. Allen, dates as director of United States Rubber should be 1936-40 instead of 1937-39.

Page 2, H. Fletcher Brown, date as director of Christiana should be 1934-44 instead of 1935-44.

Page 3, Lammot du Pont Copeland, date as director of United States Rubber should be 1940-46 instead of 1941-46.

Page 3, Pierre S. du Pont, date as member of executive committee of General Motors should be 1921-29 instead of 1921-23.

Page 4, Henry Belien du Pont, as director of Christiana, 1940 to date should be shown in addition to 1928-34.

Page 5, Colgate Darden, Jr., date as director of United States Rubber should be 1946-48 instead of 1947-48.

NOTE.—Tenure in offices indicated above, unless otherwise noted, begin and end during the years set out without reference to the month of the year in which they began or ended. Where the month of the year during which tenure begins or ends is indicated, it has been supplied because of a break in continuity of the tenure. Where the tenure is indicated as beginning in a specified year and running "to date," the "to date" shall mean in the case of:

Christiana: June 30, 1949.

Delaware: April 25, 1949.

Du Pont: Directors, August 23, 1948; members of committees, November 16, 1948; officers, August 23, 1948.

General Motors: December 6, 1948.

U. S. Rubber: August 20, 1948.

Wilmington: June 1949.

Sources: Government trial exhibits Nos. 100, 174, 175, 176, 177, 919, 999, 1000, 1223, and 1276. Moody's Manual of Investments, 1952.

Page 5, Henry Davis, date as assistant treasurer of Christiana should be 1937 to date instead of 1938 to date.

Page 6, George P. Edmonds, date as director of United States Rubber should be 1944-48 instead of 1944-47.

Page 7, John L. Pratt, date as director of United States Rubber should be 1937-42 instead of 1937-41.

Page 7, H. R. Sharp, the date 1915-16 opposite Christiana should be preceded by the words "vice president,".

Mr. McHUGH. Mr. Harris, do you know whether or not the Du Pont Co. was doing a very large volume of business with the automobile industry generally before the \$25 million investment by Du Pont in General Motors?

Mr. HARRIS. We did not go into the figures, but I think not, because we did show that about the time that they made their investment they were acquiring the means of serving the motor industry.

Mr. McHUGH. Do any of the documents that you have there now deal with the trade relations—

Mr. HARRIS. Yes.

Mr. McHUGH (continuing). Between the General Motors Corp. and Du Pont?

Mr. HARRIS. Yes, sir.

Mr. McHUGH. Will you illustrate for the committee in what way the Du Pont Corp. and General Motors did business with each other, from these documents?

Mr. HARRIS. Yes; the documents reveal some part of it anyway. They reveal, Senator, among other things that after the Du Pont money was invested in General Motors stock, as you have seen here, there was an infiltration of officials from the Du Pont Co. into high positions in General Motors, policy positions.

Then, at a lower level the trade relations that were established were described once by Mr. Sloan. He said that he was, he hoped, a member of the Du Pont family. That was in some connection—at one time a manager of the cellulose department of Du Pont was writing to the executive secretary of the purchasing committee, telling him that a very special discount that General Motors was getting was not a mere concession in price but because of the family relationship was a very special discount indeed. So you had sort of a family relationship between the two companies at times. This resulted sometimes in benefits for one and sometimes in benefits for the other.

I call the Senator's attention to committee exhibit 12, which is Government exhibit 420.

This is a letter from Lamont du Pont, who at the time he was writing, was also vice president of Du Pont and also a director of General Motors. He is writing to Pierre du Pont who was at that time on the board of directors of both General Motors and Du Pont Co., saying:

Sometime ago you inquired whether General Motors was taking its entire requirements of Du Pont products from Du Pont. My understanding at that time was that they were not. I have made inquiry and find the situation at present is as follows: (O. K. means that Du Pont is enjoying all the business in their respective lines. Where I specify "No reason," there appears to be no reason for General Motors withholding the business from us. Where I say "With good reason," there is a logical explanation).

The Senator will see the chart; it is sprinkled with "O. K.'s."

The sales department, he continues—

seems to feel that the condition is improving and that eventually satisfactory conditions will be established in every branch, but they wouldn't mind seeing things going a little faster.

(The document referred to follows:)

(Government Exhibit 420. In the District Court of the United States, Northern District of Illinois, Eastern Division. Before La Buy, J. Harry A. Harnden, Official Court Reporter)

AUGUST 10, 1921.

Mr. P. S. DU PONT,

Chairman, Board of Directors

Sometime ago you inquired whether General Motors was taking its entire requirements of du Pont products from du Pont. My understanding at that time was that they were not. I have made inquiry and find the situation at present is as follows: (O. K. means that du Pont is enjoying all the business in their respective lines. Where I specify "No reason," there appears to be no reason for General Motors withholding the business from us. Where I say "With good reason," there is a logical explanation).

	Paint and varnish	Fabrikoid	Rubber cloth	Transparent Pyralin
Cadillac.....	Very little, no reason.	O. K.....	O. K.....	O. K.
Buick.....	O. K.....	O. K.....	60 percent...	O. K.
Olds.....	O. K.....	Part, no reason.	O. K.....	O. K.
Oakland.....	50 percent, no reason.	O. K.....	Part, with reason.	O. K.
Chevrolet.....	O. K.....	O. K.....	O. K.....	O. K.
Scripps-Booth.....	None.....	None.....	None.....	O. K.
Fisher Body.....	do.....	do.....	do.....	do.....
GM Truck.....	O. K.....	O. K.....	O. K.....	O. K.

Sales Department seems to feel that the condition is improving and that eventually satisfactory conditions will be established in every branch, but they wouldn't mind seeing things going a little faster.

I am enclosing letter from Mr. Pickard and memorandum of Mr. Lindsey giving more details if you care to go into them.

LAMMOT,

Vice President, Du Pont; Director, General Motors.

LduP/MD

NOTE.—"Return to Executive Committee Room 9069" is stamped at bottom of each page.

Mr. HARRIS. In committee exhibit 13, a letter from Mr. Phellis, the general director of sales for Du Pont, written to Lammot, the vice president, on August 12, 1921, which is committee exhibit 13, Government exhibit 419, with respect to business relations with General Motors on Du Pont products, it states:

Referring to your verbal inquiry and Mr. Pickard's letter of August 2, it is the opinion of our Pyralin division sales organization that we are securing 100 percent of General Motors pyralin sheeting business, and have no basis for any complaint as regards cooperation, etc.

(The document referred to follows:)

(Government Exhibit 419. In the District Court of the United States, Northern District of Illinois, Eastern Division. Before La Buy, J. Harry A. Harnden, Official Court Reporter)

(Letterhead of E. I. Du Pont de Nemours & Company (Incorporated), Sales Department, Wilmington, Delaware)

GENERAL DIRECTOR OF SALES, August 12th, 1921.

Mr. LAMMOT DU PONT,
Vice President, Building.

(Business relations with General Motors on Du Pont Products.)

Referring to your verbal inquiry and Mr. Pickard's letter of August 2nd, it is the opinion of our Pyralin Division Sales organization that we are securing 100 percent of General Motors Pyralin Sheeting business, and have no basis for any complaint as regards cooperation, etc.

C. W. PHELLIS, General Director of Sales.
C W Phellis.

CWP: NAM.

NOTE.—"Received Aug. 12, 1921, Lammot du Pont" is stamped at top and "Return to Executive Committee Room 9069" is stamped at bottom of page. "X-1100" and "8" (with a check mark) are written at top of page. "GMC 1530" is written at bottom of page. Italics indicate handwriting.

Mr. HARRIS. On September 2, 1921, Lammot wrote to Pierre—Lammot, who was vice president of Du Pont, to Pierre, who is president of General Motors, and makes this remark:

There appears to have been——

Senator O'MAHONEY. This is exhibit 14?

Mr. HARRIS. I beg your pardon, sir?

Senator O'MAHONEY. 14.

Mr. HARRIS (reading):

There appears to have been no real reason why the Fisher Body Corp. has not used Flint Varnish Co. products, but in the recent past the subject was taken up actively, and after a conference between Mr. Sohlinger, of the Flint Co., and Mr. Fisher it was agreed that the Flint Products would be tried out and these tests are now in progress. There is every expectation that Fisher Body will in future use our products.

(The document referred to follows:)

(Government Exhibit 422. In the District Court of the United States, Northern District of Illinois, Eastern Division. Before La Buy, J. Harry A. Harnden, Official Court Reporter)

SEPTEMBER 2, 1921.

Mr. P. S. DU PONT,
President, General Motors Corporation, New York City.

DEAR PIERRE: I have your letter of August 23d in regard to use of du Pont products by General Motors Corporation.

There appears to have been no real reason why the Fisher Body Corporation has not used Flint Varnish Company products, but in the recent past the subject was taken up actively, and after a conference between Mr. Sohlinger, of the Flint Company, and Mr. Fisher, it was agreed that the Flint products would be tried out, and these tests are now in progress. There is every expectation that Fisher Body will in future use our products.

Sincerely yours,

LAMMOT DU PONT,
Vice President, Du Pont Co., Director GM.

IduP/MD

NOTE.—Following stamps appear: "File Copy" and "Return to Executive Committee Room 9069."

Mr. McHUGH. Mr. Harris, at this time what was the relationship between the General Motors Corp. and Fisher Body?

Mr. HARRIS. Fisher Body, as the Senator may remember, was a company that in the earlier days made bodies for automobiles. Their slogan was "Body by Fisher."

The Fishers were brothers. They were obviously master craftsmen. They turned out a very excellent article, and they were quite proud of it.

They were beginning to do a lot of work for General Motors, as the open car was changing to the closed car, and so great became the demands of General Motors that it appeared to General Motors that they would like to take an interest in the Fisher body and the company.

The Fisher Body Co. then expanded its capitalization, I think, from 200,000 to 500,000 shares, and sold General Motors 300,000 shares, which was a 60 percent interest.

There was a catch to it as far as the independence of the Fisher brothers was concerned, because they made it a stipulation that there should be a 5-year voting trust, and under that 5-year voting trust, control could not be taken of the company through stock ownership, and during that time they remained in control of their company.

Du Pont continued to have difficulties in selling to Fisher Body. Finally, General Motors decided to buy Fisher brothers outright, and did buy the remaining shares of the stock.

Fisher Body then became a division of General Motors, and still were somewhat recalcitrant, from the Du Pont point of view, in purchasing quantities of the Du Pont product.

It was at this time, just about this time, that what was known as a superdiscount was initiated, and if I might go rapidly through these exhibits for you, I might say—well, no, the Senator does not want me to refer to the Chicago incidents. All right.

Then the next exhibit, No. 15, so that we come finally to the place, very quickly, to where Fisher Body becomes a division of General Motors, the next is a letter from RRMC, a Mr. Carpenter, who is general manager, apparently, of the cellulose products department, stating to the president of General Motors who, also, of course, was an official of the Du Pont Co., that he would like to present to the General Motors Co. in the proper way the subject of entering into negotiations with Du Pont for supplying of all of the artificial leather and rubber which they use on some mutually advantageous basis. He discloses a condition which arose out of the close relations of the company from the competitors' point of view.

From the Du Pont point of view we feel that we are today at a disadvantage rather than advantage owing to the connection between the two companies, for the reason that the other artificial leather companies, particularly the less reliable ones, believing that we will for policy reasons take all of the business anyway, quote perfectly ridiculous prices to the different branches of the General Motors Co., thus forcing us to accept the business at a loss.

Then he sets up a case in point.

Mr. McHUGH. Does this mean, Mr. Harris, that in order to combat the General Motors-Du Pont arrangements, suppliers were being forced to furnish materials to General Motors at abnormally low prices?

Mr. HARRIS. Well, I put it a little differently. We called it the relationship between General Motors and Du Pont; it was considered by competitors to be so close that they would have no chance to break into the market unless they quoted perfectly ridiculous prices, and a concern in receivership did just that.

(The document referred to follows:)

(Government Exhibit 403. In the District Court of the United States, Northern District of Illinois, Eastern Division. Before La Buy, J. Harry A. Harnden, Official Court Reporter)

(Letterhead of E. I. du Pont Nemours & Company, Incorporated, Wilmington, Delaware.)

EXECUTIVE OFFICES, October 7, 1921.

Personal

Mr. P. S. DU PONT,

President, General Motors Corporation, Wilmington, Delaware.

Dear [Sir] Pierre

Our File "General Motors"—Fabrikoid for General Motors—

We would like to present to the General Motors Company in the proper way the subject of entering into negotiations with us for the supplying of all of the artificial leather and rubber which they use, on some mutually advantageous basis.

1st—From the du Pont point of view we feel that we are today at a disadvantage rather than advantage owing to the connection between the two companies, for the reason that the other artificial leather companies, particularly the less reliable ones, believing that we will for policy reasons take all of the business anyway, quote perfectly ridiculous prices to the different branches of the General Motors Company, thus forcing us to accept the business at a loss.

This may or may not be a fact, but it is the fact in several different cases. For example, recently the O'Bannon Company, which is in the hands of receivers, named a price of 53 cents on a Buick order, as compared with our price of 67 cents, if I remember the figures correctly, our price even being below cost. The Fabrikoid Sales Department accepted the order for policy reasons, although it might have been better to let the O'Bannon Company take it. The Fabrikoid Sales Department's argument on this is that while the executive end of the General Motors Company would not in any way be influenced by our losing some orders, that if this continued the Plant Managers might be influenced against us, believing that we always bid higher than was in any way necessary or fair.

From another point of view, if an arrangement could be made, especially at this time, whereby the du Pont Company could secure all of the artificial leather and rubber business, we could operate our plant, I believe, on a fairly economical basis, thus getting considerably lower costs (which the General Motors Company would secure the advantage from) and we would not be compelled to operate at a considerable loss all the time.

Without being familiar with all the little details, what I am afraid happens is that three or four different artificial leather companies are getting small dabs of the General Motors business, all of them running at small capacities. It seems uneconomical, from the general du Pont pocketbook point of view, not to be able to make some arrangements whereby we could run our artificial leather plants fairly full, and in the long run it would not cost the General Motors Company any more money, if as much, as if they kept us on a competitive basis when the competition, owing to the circumstances, is not altogether a fair one.

In discussing this question with Irene this morning (and you know he has not been in sympathy with the general cost plus contract with the General Motors) I put it to him in rather a different point of view than he had thought of it before, by comparing it with the general contracting business. Both from a point of view of a high class reliable contractor, and from the point of view of the client, I think it has always been accepted that considerable money is saved to both parties in the long run if work is done on this basis. In other words, if either you or I, doing a considerable amount of building over a period of years, had absolute faith in a certain contractor, a great deal of money and time could be saved if we simply ordered them to do the work each time and charge us on a charge plus basis.

I was told a few days ago that the argument that some of the General Motors Managers have put up against a cost plus contract for Fabrikoid, is that the du Pont Company overhead was so high that they would not favor any such basis. Referring to my department only, from the study we have made during

the past week and the rearrangement that we have made or expect to make, a great many thousand dollars per month will be saved. Of course, we cannot guarantee this at the minute, but everything points that way.

Of course, I appreciate that you, personally, can take no steps in this direction, but I was anxious to learn whether you are personally opposed to such a policy. If you have time when you are in Wilmington this week, I would be glad to discuss it further with you and get your ideas.

Very truly yours,

R R M Carpenter.

[GENERAL MANAGER, CELLULOSE PRODUCTS DEPARTMENT.]

RRMC/R

NOTE.—Italics indicate handwriting. The word "Personal" is written at top of first page. "Sir:" in salutation and the words under the signature on the second page are crossed out by hand. "gmc-795" is written at bottom of each page.

Mr. HARRIS. Committee exhibit 16, Government exhibit 434, dated October 20, 1922, refers to the Fisher Body Corp. This was Lammot du Pont, chairman of the board of the Flint Co., which was the subsidiary in question, writing to Fred Fisher, and he says:

I note the fact that Flint Varnish & Color Works is not getting any substantial amount of business in paint or varnish from the Fisher Body Corp.

In view of the stock ownership relations between Fisher Body Corp., Flint Varnish & Color Works, General Motors Corp., and Du Pont Co., it would seem that Flint Varnish & Color Works should enjoy a large part, if not all, of Fisher Body's paint and varnish business, unless there is some good reason for not having it.

And then he proceeds to sell his product.

(The document referred to follows:)

(Government Exhibit 434. In the District Court of the United States, Northern District of Illinois, Eastern Division. Before La Buy, J. Harry A. Harnden, Official Court Reporter)

WILMINGTON, DELAWARE, October 20, 1922.

Mr. FRED FISHER,

*President, Fisher Body Corporation,
Detroit, Michigan.*

DEAR MR. FISHER: I note the fact that Flint Varnish & Color Works is not getting any substantial amount of business in paint or varnish from the Fisher Body Corporation.

In view of the stock ownership relations between Fisher Body Corporation, Flint Varnish & Color Works, General Motors Corporation and du Pont Company, it would seem that Flint Varnish & Color Works should enjoy a large part, if not all, of Fisher Body's paint and varnish business, unless there is some good reason for not having it.

I understand the situation is as follows:

Fisher Body Corporation has tested Flint products, and, in the opinion of our men, and I understand in the opinion of your men, the quality of Flint products is as good as the product you are using. Flint Varnish & Color Works is in as good position to furnish service as the party from whom you are now buying. Flint Varnish & Color Works prices are as low as the price of the product you have been buying. The above-mentioned stock ownership relation assures Fisher Body Corporation that its orders will be given preference by Flint over any other customer (except, of course, General Motors Corporation and its subsidiaries) whenever contract conditions are equal between Fisher Body Corporation and Flint's other customers.

Would it be imposing upon you to ask your assistance toward Flint securing a portion, or all, of Fisher Body Corporation's paint and varnish business? The assistance I ask is a frank statement of the respects in which the above state-

ment of conditions is incorrect, or, if that statement is correct, statement of why Fisher should not have the business, so that such reason may be overcome if it is within your power.

Yours very truly,

FLINT VARNISH & COLOR WORKS,
LAMMOT,
Chairman of the Board of Flint Works.

LduP/MD

NOTE.—"Return to Room 9059" is stamped at top of first page and "Return to Executive Committee Room 9069" is stamped on each page. "X-1100" and a large check mark are written at top of first page. "GMC 1560" is written at bottom of each page. "File Copy" is stamped across second page.

Mr. HARRIS. Another incident—I do not have the exhibits but the quotation from the exhibits was in the trial brief—and that was what was known as the Duco incident.

Du Pont developed a very valuable, very good lacquer varnish, and seemed to be ahead of the rest.

General Motors then inquired whether it would not be permitted to take all of the varnish, and no competing automobile company permitted to have any of it at the time.

This, however, was turned down by Du Pont because they said, "We have other customers than General Motors."

However, they tried anyway, and finally there was a letter which was marked "Government's Trial Exhibit 385," which was a communication from the director of research for General Motors to Alfred Sloan, and he made this statement:

The boys suggested that you discuss with Mr. Irénée du Pont the question of keeping this development for the General Motors Corp. exclusively. Really I don't believe this need concern us very much. In the first place, the du Ponts are having a very difficult time finding sufficient solvents to keep us going in our experimental work alone.

And then he goes on:

If Fisher carries through his program of finishing a thousand or 2,000 Chevrolet closed bodies, another quite appreciable order will be placed with the Du Pont company. Understanding the situation as well as I do, with reference to scarcity of solvents, I am certain that they cannot furnish Duco to any other automobile concerns.

About this time a general purchasing committee was created to channel through the top sources, that is, through this committee and not through the divisions, the purchase of products which were marked for general contract.

Mr. McHUGH. Mr. Harris, during the course of the arrangements or the relations with General Motors had with Du Pont, was there at any time any agreed percentage of the business which was to go to the Du Pont corporation, an agreed percentage outside the corporation?

Mr. HARRIS. I do not know that you could call it an agreed percentage. There was a statement, and I will find that for you—there was a statement made by the executive secretary of the general purchasing committee on September 27, 1923, which is committee exhibit 20, and Government exhibit 412, and this is the statement that is made. I take it that this document—in fact it is—is addressed to the purchasing agents of all divisions, leather substitutes, rubber-coated fabrics.

It was brought out that the Du Pont Co. has enjoyed—that on some of these items that—

on account of constantly increasing consumption, sound judgment demands the

maintenance of more than one source of supply. The Du Pont Co. had been afforded the opportunity of meeting competitive prices, and that competitors now believed that no matter what price they put in they would receive no business. It was agreed—

that is the right word, I guess—

that on an equal competitive basis, at least 25 percent—

the agreement, however, is among the purchasing people in the committee—

it was agreed that on an equal competitive basis at least 25 percent of the business should be placed with sources other than the Du Pont Co.; that the Du Pont Co. be notified that they should make their best price in their initial offer and not count upon having the opportunity to meet competitive prices.

I might say that the figure as it finally appeared after years of trading between the parties in Du Pont products, paints, solvents, varnishes, and fabrics, was from 62 to 75 percent of General Motors' business given to Du Pont.

Mr. McHUGH. Mr. Harris, what particular advantages did the General Motors Corp. gain from its trade relations with the Du Pont corporation?

Mr. HARRIS. That would or could only be a matter of opinion, and I would assume that they would gain certainly a stable supply source for the greater portion of their products.

At times, one time which we will now come to, they did gain what appears to be an important advantage over competitors in a secret super discount.

(The document previously referred to follows:)

(Government Exhibit 412. In the District Court of the United States, Northern District of Illinois, Eastern Division. Before La Buy, J. Harry A. Harnden, Official Court Reporter)

GENERAL MOTORS CORPORATION,
GENERAL PURCHASING COMMITTEE,
Detroit, Michigan, September 27, 1923.

Subject: Minutes: Ninth Meeting, Detroit.

Attention of: Purchasing Agents, All Divisions.

Meeting called to order by Mr. Sloan.

1. Minutes of meeting of August 30, approved. Minutes of Standing Subcommittee meeting of September 21 approved.

2. Miscellaneous Matters:

(a) Matter of Tire Contracts: Secretary reported that on September 24 letter was sent to the Car & Truck Divisions requesting estimate of requirements for 1924, based on NORMAL consumption and asking for expression of preferences in percentages for the following sources: Goodyear, Goodrich, United States, Firestone, Ajax and Kelly Springfield.

(b) Productive Steel: Relative to the study of use of special forging steel vs. ordinary forging steel Mr. Barton reported that Mr. Dailey was that day in Flint on the matter and that the study is progressing.

(c) Hardwood Lumber Supply: Mr. Sloan reported that he is in touch with the development concerning Fisher.

(d) Motor Oils: The question of feasibility of standardizing Motor Oil for block test and drive-aways raised by the Standing Subcommittee was brought up and the Secretary was requested to develop figures showing any savings that might accrue through such standardization.

(e) Coal: Preliminary figures prepared by the Power & Construction Section indicating that from March 1920 to August 1923 inclusive had Central Forge participated in the Bertha-Consumers contract approximately \$50,000 would have been saved, was submitted by Secretary. These figures were questioned by Mr. Mott and the matter of participation by Chevrolet-

Forge and Chevrolet-Flint in the contract was raised. Inasmuch as it was the unanimous opinion of the Purchasing Agents present that it is more economical through control of prices and quality to purchase coal under contracts, the Secretary was instructed to write Mr. Knudson requesting that he prove the soundness of the contention that it is more economical to purchase Coal in the spot market than to participate in the contract as it has existed.

(f) Division Representative on Committees: Mr. Sloan will take up at Operations Committee meeting the matter in general of having representatives from Divisions appointed for committee work in cooperation with Staff Sections.

(g) Vacuum Oil Company: Letter from Mr. P. M. Gordon of the Vacuum Oil Company requesting permission to appear before the Committee to present the merits of his Company's products was read.

The Secretary was instructed to inform Mr. Gordon that it was not consistent with the practice of the Committee to permit representatives of suppliers to appear at the meetings and that consequently it must deny his request.

(h) Contract Form: Insertion of clause in contract to protect Divisions from the use of their names in advertising, reading as follows, approved: "The seller shall not, without first obtaining the written consent of the buyer, in any manner advertise or published the fact that seller has contracted to furnish buyer the articles herein mentioned, and for failure to observe this provision buyer shall have the right to cancel this contract without any further liability thereon."

3. General Contracts for Redevelopment: The only items considered were the following:

(n-o) Sheet Steel (12-31-23): The question was raised as to whether there is any advantage in making general contracts for sheets. Sentiment of majority is that there is no advantage and no contract redevelopment was authorized.

(p-q) Brass and Copper Sheets (12-31-23): Mr. Pratt suggested that inasmuch as Harrison Radiator now consume from 90 to 95 percent of these items and that whereas Mr. Harrison has had considerable experience in negotiating purchases of such items, he be appointed a subcommittee of one to negotiate general contracts for General Motors requirements of these items, reporting to the Standing Subcommittee. This suggestion was approved by the Committee and the Secretary was instructed to place the necessary information for contract redevelopments at Mr. Harrison's disposal.

(u) Aluminum (12-31-23): Redevelopment of general contract proposals authorized.

4. Reports on Studies:

By Factory Section.

(a) Insulated Cable: Tentative specifications have been printed in Book of Standards. G. M. C. Specifications Nos. 114,000 and 114,050. These specifications have been approved by Chevrolet, General Motors Truck, Oakland, Olds, and General Motors of Canada. The matter is under discussion with Buick and Cadillac. Buick's approval shortly expected.

(b) Cotton Wadding, Cotton Batts, Cotton and Jute Batts: Standardization of practice being required before standardization of materials can proceed, it was recommended that a committee of body trimming engineers, having a representative from each of the Car & Truck Divisions be called together for the purpose of studying and developing the matter. The factory Section was authorized to select the committee's membership through contact with Division executives and to guide the work of the committee.

(c) Loading or Shipping Blocks—Loading Decks: Progress reported.

(d) Flexible Metallic Conduit: Study in progress reported but not completed due to employment of time on more important items.

(e) Belting—Rubber & Fabric: Whole matter of belting being studied by recognized belt authority.

(f) Gloves—Cloth, Leather, Acid, Electrician: Factory Section reports its work on development of specifications completed when the following items were printed in the Book of Standards:

GMC-2301M-2304M

GMC-2305M-2306M

GMC-2307M

GMC-2308M

GMC-2309M

GMC-2310M-2316M

GMC-2317-2323M	GMC-2389M-2390M
GMC-2324M-2330M	GMC-2347M-2360M
GMC-2331M	GMC-2361M-2374M
GMC-2332M	GMC-2375M-2388M
GMC-2333M-2346M	

NOTE.—This work was done prior to the ruling of the Committee that tentative specifications in multigraph form are to be submitted to the Committee for consideration before transmission to the Divisions for approval. Upon approval by the Divisions the Factory Section will then be authorized to have same printed and inserted in the Book of Standards.

(g) Brooms—All kinds: Factory Section reports its work on this study completed when the following items were printed in the Book of Standards:

GMC-2281M	GMC-2290M
GMC-2282M	GMC-2291M
GMC-2283M	GMC-2292M
GMC-2294M	GMC-2293M
GMC-2295M	GMC-2294M
GMC-2286M	GMC-2295M
GMC-2287M	GMC-2296M
GMC-2288M	GMC-2297M
GMC-2289M	GMC-2298M

NOTE.—Same remarks apply here as above.

(h) Goggles, Grinders and Welders: The study is now in the hands of the Safety Engineers of the various Divisions. Factory Section will keep contact until final recommendation to the Committee is made.

(i) Acetylene & Oxygen Regulators—Line and Tank: Enough information has been collected to show that the matter can best be handled by a representative committee from the Divisions. Factory Section was authorized to have such a committee, consisting of representatives from important Divisions concerned, appointed through contact with the Division executives. Factory Section to guide the work of this Committee.

(j) Annealing and Carbonizing Boxes and Pots: Study still in progress. Assistance being given by committee of metallurgists. Reported that during the past week there was uncovered what promises to be much better composition than heretofore purchased, and at considerable less cost.

(k) Hack Saws: Progress report.

(l) Paint Spraying Equipment and Supplies: Progress report.

(m) Wiping Rags: Factory Section reported its work completed. Specifications for the following items were printed in the Book of Standards:

GMC-2261M
GMC-2262M-2270M
GMC-2271M
GMC-2275M-2280M

NOTE.—Same remarks apply here as to items f and g.

By Subcommittee:

(a) Car Frames: Letter from A. O. Smith Corporation dated September 17 to Mr. Allen as follows read:

"First: Our company agrees to a reduction of 25 percent on the labor, overhead and profit item; that is on everything except raw materials.

Second: This reduction to start with all shipments from September 1, 1923.

Third: The above reduction to be further guaranteed on your work for one year after the completion of the present contract, it being understood that we will review the economies in existence by July 1st, 1924, and if it is possible to make a further reduction we will do so for the following twelve months, but in any event we obligate ourselves to the 25-percent reduction during those twelve months.

Fourth: The General Motors Corporation in lieu of the above guarantees to give us the total frame requirements of Buick Motor, Oakland, Oldsmobile, and General Motors Truck, up to July 1, 1925, and Chevrolet to July 1, 1924.

It further agrees to give us all the Chevrolet business except that which the Chevrolet Company can purchase for some assembly plants cheaper than the price we quote. It is thought possible by Mr. O'Keefe

and other Chevrolet officials that the freight disadvantage that we might suffer in shipping from Milwaukee might make it possible for Chevrolet to buy their requirements for Tarrytown and any other distant points laid down cheaper than our price, plus the freight.

We, therefore, agree not to ask for any of the Chevrolet business where it would be given to us by Chevrolet at any disadvantage to themselves.

Second letter of September 17 from Mr. Smith brought out the fact that on the latest proposed schedules for General Motors frame requirements for Car Divisions a saving of \$766,250 per year was forecasted and with the addition of General Motors Truck probably over \$800,000, and requested that we give some consideration to bearing the cost of new tools.

In a letter of September 24 to Mr. Allen he noted that the cost for thoroughly tooling up the new plant together with some dies and tools to be kept in readiness for the old plant as an added protection against deliveries would aggregate \$172,900.

Mr. Allen was instructed to negotiate the matter further, having in mind that in lieu of our paying tool charges which would establish an undesirable precedent, giving consideration to modifying the 25-percent reduction noted in the first letter of September 24 so as to at least partially absorb the estimated tool charges.

(b) Fuel Oil: Progress report.

(c) Metal Cleaners—all kinds: Progress report, as follows:

After the analysis of a number of detergents or scouring powders, together with a comparison with their results as used in our various plants, we decided that Sun Bright made by the Swift and Company seems to be best adapted to our needs. We then ordered from the Bruce Products Company 2—1 keg samples of material made up in accordance with our analysis on Sun Bright. One keg was sent to Mr. Oviatt, of the Buick Motor Car Company, and one to Mr. Penberthy, of the Building Corporation. Both of these men will report to the Committee as to the effectiveness of this cleaner.

(d) Copper Wire—Productive Material (all sizes and insulations not included in cable already reported). Mr. Cromer reported: That the prices being paid by the four Divisions using copper wire are all in line and each Division is thoroughly familiar with their own requirements as to quality required and service desired and that there is active competition. That at present each Division has the opportunity of contracting for a certain percent of its requirements for three months with any of its present suppliers, at a definite price, and that the remaining requirements can be placed after securing competitive prices.

Mr. Armstrong agreed with Mr. Cromer that no saving could be effected through development of general contracts.

This item was therefore rejected as a general contract proposal.

By Purchase Section:

(a) Export Paper: Reported that General Motors Export are using what is known as 60DSK Kraft paper made by Keystone Roofing Mfg. Co. of York, Pa. Samples of the paper are being secured by Purchase Section for analysis with a view to setting up a definite specification so that competitive bids may be secured.

(b) Stationary Supplies: Progress report. Study under way to determine whether purchases can be more economically made through concentration with an outside source than through establishing our own central stationary supply department.

(c) Leather Substitute—Rubber Coated Fabrics: It was brought out that the Du Pont Company has enjoyed the larger portion of General Motors requirements of these items. That on account of constantly increasing consumption, sound judgment demands the maintenance of more than one source of supply. That the Du Pont Company had been afforded the opportunity of meeting competitive prices and that competitors now believe that no matter what price they put in they would receive no business.

It was agreed that on an equal competitive basis at least 25 percent of the business should be placed with sources other than the Du Pont Company. That the Du Pont Company be notified that they should make their best price in their initial offer and not count upon having the opportunity to meet competitive prices, and that on the basis of competitive prices the Divisions were free to place their business to the best advantage. Inasmuch as Divisions have no facilities for making complete chemical and physical

tests of these items the Factory Section was instructed to immediately install apparatus and equipment. Secretary advised that suppliers of these items would afford representative from the Factory Section every possible facility in developing the proper methods and securing equipment necessary for making such tests.

Secretary was instructed to write Mr. C. L. Petze, Division Manager of Du Pont Company relative to decision of the Committee and to send copies to the Purchasing Agents of interested Divisions.

5. General Contracts Authorized:

(a) Requirement contract of Elliot Fisher for General Motors requirements of their machines which would insure a reduction in purchase price of 10 percent authorized.

NOTE.—Check marks in right margin of first page are inserted after "A. P. S." and "A. T. B." in a routing stamp bearing initials "A. P. S.", "J. L. P.", "P. . . . [Illegible]", "W. J.", "A. T. B." and "W. F. A.".

Mr. McHUGH. Well, would not this work to the advantage of the General Motors Corp. in times or scarcity of any of the materials that were being sold by the Du Pont Corp.?

Mr. HARRIS. In my opinion, it would.

Mr. McHUGH. Were there—

Mr. HARRIS. It would be likely to, I would think.

If you have this Duco as a case in point, that the solvents were not enough for anybody else but General Motors. That seems to be from a General Motors' point of view.

Mr. McHUGH. Did you have any indication that there were other times at which some of the materials being furnished by Du Pont to General Motors were in short supply?

Mr. HARRIS. I do not recall any specific ones now, unless you have something in mind.

Mr. McHUGH. This general purchasing committee which you have just described, Mr. Harris, can you tell us for what types of goods it was intended to operate?

Mr. HARRIS. A very wide range. The purchasing committee would decide whether there should be a general contract, and we found that there was a very wide range of articles which were brought or supplies which were brought within the general contract.

If a general contract was determined upon, the division people could not purchase on their own initiative; they must purchase on the contract terms and under the contract.

Mr. McHUGH. Then this had reference not only to materials purchased from the Du Pont Corp. but acquired from other suppliers?

Mr. HARRIS. Sure it did, yes.

Mr. McHUGH. Did you happen to know whether or not the general purchasing committee was obtaining steel?

Mr. HARRIS. Well, there was an exhibit in the case that showed all the things that they obtained, and I forget what they were. There were a large number of things. I think it might have been steel, but I would not say at the moment.

Mr. McHUGH. But it is your impression that the general purchasing committee did buy on behalf of the corporation—

Mr. HARRIS. Oh, yes.

Mr. McHUGH. Most of the basic materials bought by the company?

Mr. HARRIS. I do not say most; I say many.

Mr. McHUGH. Can you tell us, Mr. Harris, for how long a period of time this general purchasing committee was in existence?

Mr. HARRIS. It is just a matter of memory which may be faulty, but I am under the impression that it lasted until 1931. It began about 1922. It might have been longer than that. It is purely a matter of memory. There is no document apparently that I have that shows when it passed out of existence.

Mr. McHUGH. Is it your impression then that after 1931 or approximately then, when the purchasing committee passed out of existence, that the various car divisions then bought for their own account?

Mr. HARRIS. That I do not know, sir.

Did you wish to go into the matter of the discount now, Mr. McHUGH?

Mr. McHUGH. Yes. I wonder if you would explain what that meant.

Mr. HARRIS. We pass then to committee exhibit 22.

Mr. McHUGH. 22?

Mr. HARRIS. Yes. Committee exhibit 22 is a document known as the monthly report, June 1925, for the paint, lacquer, and chemicals department, and it is dated July 24, 1925.

On page 4 of the report you have this statement:

We are negotiating a 1-year contract dating from July 1 with General Motors which will cover the entire requirements of the General Motors units for pyroxylin finishes and a minimum of 50 percent of Fisher Body requirements. The committee has approved an extension of the discount scale which has been enforced this year, and by purchasing maximum amounts during any given quarter, General Motors may gain up to 12-percent discount from the present standard price. It is hoped that, since almost all of the Fisher Body business must be included if General Motors as well as Fisher is to obtain this maximum discount, that this will prove such a strong inducement for Fisher to give us this business that competition for Fisher business will be greatly lessened.

(The exhibit referred to follows.)

Government Exhibit 454. In the District Court of the United States, Northern District of Illinois, Eastern Division. Before La Buy, J. (Harry A. Harnden, Official Court Reporter.)

JULY 24, 1925.

To: Executive Committee.

From: Paint, Lacquer, and Chemicals Department.

MONTHLY REPORT—JUNE 1925—PAINT, LACQUER, AND CHEMICAL DEPARTMENT

JULY 20, 1925.

Mr. W. P. ALLEN,
General Manager.

CHEMICAL PRODUCTS DIVISION

EXECUTIVE COMMITTEE REPORT—JUNE 1925

Eliminated—4 2052.

GMC-1054

(NOTE.—These are excerpted pages from the original exhibit.)

ceptable to the furniture manufacturer who had to apply it. In planning the du Pont furniture lacquer the ultimate consumer was mostly in mind, and while there is no question but what the du Pont furniture Duco was more durable and gave better value to the consumer, we were handicapped in merchandising it to the furniture manufacturer because of its greater expense to him; it cost the furniture manufacturer more labor to rub; it required the application of heavier coats (or more coats) to produce the required depth of finish; and it was a more expensive formula for Parlin to manufacture in the first place. It has recently been concluded, therefore, to revise the formula of clear Duco for

furniture, and Parlin is now offering a product which is the equal of the Glidden lacquer and which can be marketed at their price and show a very satisfactory margin.

Mr. Moosmann is due to land in London on Monday, July 27th, to complete negotiations with the Nobel Company for the formation of a subsidiary company to manufacture Duco in England to supply the British Empire, except Canada. Mr. Moosmann will take the occasion also to investigate the possibilities of manufacturing Duco or having it manufactured in the other European countries.

The negotiation of a contract for supplying Duco to all General Motors units on a sliding scale price, based on quantity discounts, was originally on the basis of a period of one year, ending June 1926, but they have recently asked us to agree to a period of six months only. While this is not as satisfactory it has been thought best to acquiesce in it.

Parlin is just about completing an important step in the manufacture of Duco in changing the grinding from peb-

CP-4

because of an almost universal change to the new colors for 1926 models, our automobile customers, many of whom are now in production on these models, allowed their stocks of the older colors to run out completely. This accounts for our lower sales in June, and also means that our customers are without very heavy stocks and must purchase in relatively large amounts as soon as the new production is well under way. The trend toward a greater variety of colors and the use of two and three color schemes on many of the new models means that we shall be called upon to produce a much greater variety of colors than has been the case in the past. We expect Flint sales in July to be approximately the same as June.

It has been decided to make a radical change in our policy on automobile refinishing, and to permit our shops to use Duco over old paint instead of requiring the complete removal of the old finish as has been our standard practice. This decision has been arrived at for two major reasons: First, our refinishers have been complaining constantly that they were losing business to other lacquer shops who were doing this work with competitive lacquers and in most cases telling their customers that they were using Duco, so that in the event of failure Duco was blamed in any case, so we are losing the business without safeguarding our reputation.

In addition to this, and in connection with a new General Motors contract which is mentioned below, we have been compelled to permit General Motors to furnish Duco to its direct factory branches for use in reconditioning second-hand cars. This will always be done over the old finish, and it was felt that it would be unfair to our other refinishers to prevent them from following this practice while permitting the General Motors shops to do so.

In our announcement to the trade on this change in policy which is just going out now, we are describing the safest plan we know for this work, and recommending to them that they have a clear understanding with their customers that such work is not standard Duco finish and cannot be guaranteed.

[CP-5]

We are negotiating a one year's contract dating from July 1st with General Motors which will cover the entire requirements of the General Motors units for pyroxylin finishes and a minimum of 50 percent of Fisher Body requirements. The Committee has approved an extension of the discount scale which has been in force this year, and by purchasing maximum amounts during any given quarter General Motors may gain up to 12 percent discount from the present standard price. It is hoped that, since almost all of the Fisher Body business must be included if General Motors as well as Fisher is to obtain this maximum discount, that this will prove such a strong inducement for Fisher to give us this business that competition for Fisher business will be greatly lessened.

To increase the sales of No. 7 Polish a new and more liberal scale of discounts was put in force during the month, and arrangements made to sell this through other division as well as Chemical Products and Paint.

Early in July our main sales office for automotive products which has been at Flint was moved to the General Motors Building in Detroit. This is a more

central location, and it is expected that our work can be carried on more efficiently in our new headquarters.

The training in Duco manufacture of the superintendent of the Necol Factory in England has been completed, and he has returned to England accompanied by a representative of this Division who is to negotiate final contract with the Nobel interests and details incidental toward formation of the new English Duco Company. There seems to be little hope that we can use the Duco name in England, because it has already been trade marked and used for many years by Brown Brothers, manufacturers of automobile accessories.

FAB-2

continuing firmness in export sales. Of the \$8,800 profit, \$6,500 is yielded by export trade, and \$2,300 by domestic.

OUTLOOK:

Newburg earnings for July should at least approximate the June level. Billings will be considerably higher but will contain a large proportion of the light sheeting qualities on which the margin of profit is narrow. Also, there will be a further substantial charge to reclamation for defective deck material of 1924 manufacture. Fairfield's volume of sales will be substantially larger than for June, but profits will be adversely affected by the extreme high and rapid advance in the rubber market.

NEWBURGH BRANCH:

Sales. June billings for Newburgh, with comparative past figures, were as follows:

	June	May	January-June 1925	January-June 1924
General Motors.....	\$60, 268	\$98, 646	\$472, 521	\$728, 554
Domestic, excluding General Motors and Tontine.....	232, 776	246, 355	1, 649, 888	1, 503, 215
Tontine.....	48, 865	69, 929	308, 035	144, 226
Export.....	91, 678	97, 488	497, 665	341, 990
Total.....	433, 587	512, 418	2, 928, 109	2, 717, 904

June billings were 9 percent less than forecast. This was due in part to a change by Chevrolet from black to dark gray upholstery, resulting in some interruption of our shipments, and in part also to congestion on the plant, resulting in numerous delayed shipments.

FAB-3

Business Booked in June amounted to 1,278,551 yards, against 658,000 yards in May. The increase is mainly attributable to large bookings from Chevrolet, Fisher Body and Hartmann Trunk Co.

Prices and Competition: In the artificial leather field, the general competitive situation continues fairly satisfactory. Trade resistance to the new quantity discount policy appears to have about disappeared. Aside from this general statement, there are no special new developments worth reporting.

Trend of Business: The normal summer decline in sales has thus far largely failed to materialize, and the near future outlook for Newburgh is favorable. Our automobile business has been very good, owing especially to the unexpected volume of the bookings by Chevrolet. In bookbinding, business has been very good in the Middle West, and substantial improvement in the East is expected in the fall. The outlook in the trunk and case covering field is favorable, as is also the case in the novelty field, corresponding with the general healthy condition of retail business. In short, our present expectation is for satisfactory volume over the remainder of the year.

Export: In the export field, the outlook for volume continues promising altho on the more general and active competition it appears probable that prices will have to be figured closer than over the first 6 months of the year. Production in the French Fabrikoid plant is now scheduled to begin about October first. This, of course, will result in the loss to us of the French business, with some offset thru the profits expected from the new enterprise. However, some foothold is being secured in Great Britain, and present indications justify the hope of our doing some business also in Germany.

FAB-4

Sales of Special Significance: In June, the Hartmann Trunk Co. released 140,000 yards; all, however, of the cheap sheeting type. During the month also 60,000 yards of sheeting qualities were sold to Morris White, of New York, for pocketbook linings. In June, we booked 25,000 yards of material for closed car curtains. Thus far we have been unsuccessful in selling Fisher Body on this item, owing apparently to price considerations; but during June Fisher Body placed various orders with us for a total of approximately 40,000 yards of Fabrikoid. Included in our export bookings was an order for 15,000 yards of upholstery material for use on the Fiat car.

Complaints: In June, 63 complaints were received on Newburgh products against 72 in May, with a total of only 22 complaints unadjusted at the end of the month against 36 for the month preceding. On the 77 Newburgh complaints adjusted during the month, the total estimated loss is roundly \$7,700.

Production: Production in June was roundly 701,000 stads, against 782,000 stads in May.

Solvent Recovery: Total plant recovery for June, including both activated carbon and the old type machines, was 53.1 percent, against 64.8 percent for May. Substantial losses have resulted from delays in our receipt of the necessary fans and coolers for reforming our activated carbon system; and the ill-effects of these delays, both in reduced recovery and some slowing up of production, will continue to be apparent in our July report. At this writing, however, most of the replacement units are on the plant and installed or in course of installation; and prompt relief from the adverse conditions of the past six or eight weeks is expected.

FAB-7

Pyro consumed during June was roundly 92,000 lbs. In addition about 1,100 lbs. were shipped to Canadian Fabrikoid.

Fairfield Branch:

Sales: Fairfield billings for June, with comparative past figures, were as follows:

	June	May	January-June 1925	January-June 1924
General Motors.....	\$86,508	\$14,001	\$132,126	\$619,574
Domestic, excluding GM and Ventube.....	87,168	42,609	533,094	668,398
Ventube.....	10,169	27,577	88,908	60,229
Export.....	71,191	73,619	350,800	155,387
Total.....	255,126	157,806	1,105,928	1,503,588

Fairfield's June billings show an increase of 60 percent over May and 10 percent over forecast. This is principally due to the Chevrolet contract, which was supposed to cover July, August, and September, but under which a considerable volume of releases was given us in June.

For the first six months of 1925, our Fairfield sales were 27 percent lower than for the first half of 1924. This was due entirely to our lack of the Chevrolet and Buick business over the first half of this year. This, it will be recalled, we had the opportunity of taking at competitive prices, but refused to book on an unprofitable basis. Against the loss of volume and consequent impairment of current profits resulting from this refusal, we feel there is a substantial offset in the form of a somewhat improved general tone of the market in which we must operate.

Business Booked in June amounted to 670,000 yards, against 315,000 yards booked in May.

Trend of Business: Fairfield's June billings are larger than for any month since last November, owing chiefly to large orders.

FAB-8

from Chevrolet and from Holden Body Co., of Australia. The present abnormally high prices of rubber will, of course, retard sales as well as restrict profits, particularly in the new Specialty line. Apart from this obstacle, the

further development of which it is difficult to foresee, the prospects for the Fairfield plan appear favorable.

Sales of Special Significance: In June, an order was secured from Maxwell Motors for 6,500 yards of a special whipcord; and every effort is being made to use this footing for getting a larger share of their business. Both Chevrolet and Buick have abandoned drills for whipcord in their top material for open models; and a general trend to this fabric appears to be in progress.

Prices and Competition: On July 15 prices on the standard Fairfield line were increased about 7 percent to take care of the advance in rubber; and similar advances are being made at frequent intervals in our quotations on Specialties. In the automobile field, the general price situation continues much less satisfactory on rubber-coated than on pyroxylin-coated products. One recent Fisher Body order of 100,000 yards has been lost to Chase, and another of the same size is believed to have been lost to Haartz on prices. With respect to Fisher Body's rubber business, we have some very slight encouragement through the receipt of the recent very small order for less than 2,000 yards of double texture material for use on the open Cadillac bodies which they are now building.

Complaints: A total of 13 complaints on Fairfield products was received during June, including none believed to be of any very serious nature.

NOTE.—"gmc-1054" is written in lower right corner of each page of excerpts; "PAINT, LACQUERS & CHEMICALS DEPT. RECEIVED JUL 24, 1925" is stamped at bottom of last 5 pages. Stamped at bottoms of successive pages of the excerpts are the numbers "4", "15", "16", "35", "36", "37", "40", and "41." Lines in left margins on pages FAB-4, FAB-7, and FAB-8 are by hand; next to hand-drawn line on page FAB-7 is written: "Last Half?".

(Letterhead of E. I. du Pont de Nemours & Company (Incorporated), Paint, Lacquer, and Chemicals Department.)

WILMINGTON, DELAWARE, January 25, 1927.

Mr. LAMMOT DU PONT, President.

SALES TO GENERAL MOTORS AND FISHER BODY

In response to your verbal request for a statement of the volume of business on products of this Department that are consumed by General Motors and Fisher Body, but which was not enjoyed by the du Pont Company for the year 1926, this is estimated to have amounted to a total of \$5,339,500, made up as follows:

FABRIKOID DIVISION

	Fabrikoid	Rubber	Total
GM Truck.....			
Oakland.....		\$90,000	\$90,000
Olds Motor.....		13,000	13,000
Buick.....		106,000	106,000
Chevrolet.....			
Cadillac.....			
Yellow Truck.....	\$45,000	53,000	98,000
Fisher:			
Ohio.....	1,100,000	350,000	1,450,000
Detroit.....	500,000	70,000	570,000
Total, Fabrikoid division.....	1,645,000	682,000	2,327,000

CHEMICAL PRODUCTS DIVISION (Parlin)

Fisher Body Primer.....	\$28,500
Fisher Body Surfacer.....	1,371,750
Fisher Body Miscellaneous, ground coats, slush coats, etc.....	185,000
Fisher Body—Black Duco.....	1,099,500
Fisher Body—Thinner used with Black Duco placed with competitors.....	327,750
Total Chemical Products Div.....	\$3,012,500

The above figures for Parlin do not mention General Motors car Units. The reason for this is that Buick, Chevrolet and Olds purchased practically 100 percent of their requirements, so that Oakland was the only Unit who purchased anything worth while from competitors. This was mostly on Undercoaters and amounted to approximately \$100,000 for the year 1926.

When we were discussing with the General Motors Purchasing Committee in the middle of last year the question of granting them a super discount as an inducement to place with the du Pont Company more of the General Motors business, they admitted that for the year up to that time General Motors and Fisher Body Company had bought a total of \$12,000,000 worth of materials made by the du Pont Company, of which \$8,000,000 had been placed with us and 4,000,000 with competitors.

During the last half of 1926 Fisher Body placed the greater portion of their Rubber business with Fairfield so that the above figure of \$5,339,500 would be reduced approximately half a million dollars as a result of this change during the last half of 1926.

W. P. ALLEN.
/s/ W. P. A.

Year in this case means "12 months ending June 30, 1926."

NOTE.—At top of first page appears handwritten notation:

"Copy Mr. P. S. duPont
"Mr. J. J. Raskob"

Also at top of first page is stamp "Received Jan. 27, 1927 Lamont duPont." In next to last paragraph word "year" has been circled in pencil and an arrow drawn to sentence which appears after signature. Italics indicate pencil insertion.

Underscoring on first page is by hand.

Then, if you take committee document 23, which is a letter from the general manager of the cellulose department to the executive secretary of the general purchasing committee, on September 23, 1926, you get the beginning of what was known as the superdiscount.

Mr. HARRIS. It is page 2, "Confidential Discount Plan." Do you have it?

Mr. McHUGH. Yes; it is Government exhibit 462.

Mr. HARRIS (reading):

The plan outlined herein will apply to all purchases made by the American divisions of the General Motors Corp. and the Fisher Body Corp.—

excluding, however, the export company.

During the year—

going over to the next page—

beginning July 1, 1925, and ending June 30, 1926, the GMC group purchased from the Du Pont Co. (exclusive of export purchases) \$7,930,034 worth of products. Your current purchases are at a much higher rate. During the months of July and August 1926, they were at the annual rate of \$10,750,494. We have decided to use as the base line for this plan your purchases for the year ending June 30, 1926, of approximately \$8 million.

They are now going to give discounts on purchases of about that amount. On a purchase of \$9 million they will return \$75,000; on \$10 million, they will return \$175,000; on \$11 million, \$300,000; on \$12 million, \$450,000. On each additional \$1 million, \$150,000.

This superdiscount was in effect, I believe, from 1926 until 1933.

I call the Senator's attention to the last page:

As explained by me at the time of my discussion with your committee, the success of this plan hinges largely on the ability of the members of your committee to treat the details of this arrangement as a confidential matter between the two companies. You will readily understand that our continuing to make adjustments of this size is contingent upon our ability to maintain our price structure to customers other than the General Motors group, and if this ar-

rangement is translated into cents per gallon, yard, or pound of individual commodities, and becomes general knowledge in the trade, our entire price structure will collapse, and we will thereafter have insufficient earnings to continue the arrangement.

Senator O'MAHONEY. Who signed that?

Mr. HARRIS. This is signed by W. P. Allen. He is the general manager, I think, of their cellulose department; and the same Allen, in the next committee exhibit 24, again enjoins secrecy. That is Government exhibit 463. The date is September 23, which is exactly the same date. It is a covering letter, obviously, to James Lynah, the executive secretary.

I want to say a word to you about the desirability of keeping this matter confidential and treating it as an arrangement within the Du Pont-GM family rather than as a mere concession in prices on individual commodities. A few days after I had my last discussion with the committee—

and then he goes on to say he found that there had been a leak, and he just gives the details, and he finishes his letter:

It is obvious that we would be unable to continue this arrangement unless we can secure much higher prices from our other customers; and, if the terms of this arrangement become public knowledge in the trade, we would inevitably be forced to reduce prices generally, which would in turn wipe out the earnings which we purpose to return to you as a rebate under this plan.

(The documents referred to follow:)

(Government Exhibit 462. In the District Court of the United States, Northern District of Illinois, Eastern Division. Before La Buy, J. Harry A. Harnden, Official Court Reporter)

"COPY"

SEPTEMBER 23, 1926.

Personal and Confidential.

Mr. JAMES LYNAB,

*Executive Secretary, General Purchasing Committee,
General Motors Corporation,
Detroit, Mich.*

DEAR SIR: I received your letter of September 20th advising me that the next meeting of your Committee will be held in Detroit on Wednesday, September 29th, and I find that I am booked up for an important meeting on the same day in New York from which I cannot be excused without great embarrassment. We have given the question of an additional sliding scale of quantity discounts based on total dollars of purchases by the General Motors group from the du Pont Company a great deal of study since my discussion with your Committee last month, and, since I shall be unable to present this in person to the Committee, I have decided to outline the plan to you by letter. The plan itself, I believe, leaves little or nothing for discussion as it involves the largest concessions which it is possible for us to make, and I believe is in the form which the Committee desires. Moreover, it involves no obligation whatever on the part of General Motors group, and is wholly in the nature of an incentive to the members of the group to place a larger proportion of their purchases with the du Pont Company. It likewise is entirely aside and beyond the individual purchase contracts which are at present in effect or which may be made in the future.

In deciding upon the discounts which are offered in this plan, we have waived aside all questions of variation in margin of profit between different products, realizing that to be successful the plan must offer the greatest possible incentive to your group and at the same time secure an advantage for the duPont Company as a whole. As applied to some of the products which we sell to your group, the operation of the plan will result in actual loss; but, as applied over the entire range of our products, we believe that it will be profitable both to the General Motors group and to duPont Company. The plan itself follows.

CONFIDENTIAL DISCOUNT PLAN

EFFECTIVE OCTOBER 1, 1926, TO SEPTEMBER 30, 1927, COVERING ALL PURCHASES MADE BY THE G.M.C. GROUP FROM E. I. DU PONT DE NEMOURS & COMPANY

The plan outlined herein will apply to all purchases made by the American Divisions of the General Motors Corporation and the Fisher Body Corporation, but will exclude purchases made by the General Motors Export Company, General Motors of Canada, Ltd., and any overseas divisions or plants of the G.M.C. It is necessary to exclude the Export Company and foreign subsidiaries because our business in Canada and in the United Kingdom of Great Britain is handled by subsidiary companies in which we own only a minority stock interest and whose price policy is beyond our control. Moreover, production costs in these countries are generally much higher than ours due to lower output, higher taxes and protective and/or revenue tariffs on essential ingredients. Likewise, in foreign countries where our business is not conducted through subsidiaries, we are committed by contract with agents whose resale prices are similarly beyond our control. Moreover, the total volume of such purchases is of little significance. For the year ending June 30, 1926, our total sales to the Export Company amounted to only \$179,000 out of total purchases by the General Motors group of \$8,109,000, or 2.2 percent.

During the year beginning July 1, 1925, and ending June 30, 1926, the G.M.C. group purchased from the du Pont Company (exclusive of export purchases) \$7,930,034 worth of products. Your current purchases are at a much higher rate. During the months of July and August 1926 they were at the annual rate of \$10,750,494. We have decided to use as the base line for this plan your purchases for the year ending June 30, 1926, of approximately Eight Million Dollars (\$8,000,000).

On September 30, 1927, or as soon thereafter as the figures can be obtained, we will return to the General Motors Corporation, in cash, the following amounts based upon purchases made from us in excess of \$8,000,000 during the year ending on that date.

Amount of Purchases:	<i>Amount to be Returned</i>
\$8,000,000-----	0
9,000,000-----	\$75,000
10,000,000-----	175,000
11,000,000-----	300,000
12,000,000-----	450,000
Each additional 1,000,000-----	150,000

As explained by me at the time of my discussion with your Committee, the success of this plan hinges largely on the ability of the members of your Committee to treat the details of this arrangement as a confidential matter between the two companies. You will readily understand that our continuing to make adjustments of this size is contingent upon our ability to maintain our price structure to customers other than the General Motors group, and if this arrangement is translated into cents per gallon, yard or pound of individual commodities and becomes general knowledge in the trade, our entire price structure will collapse, and we will thereafter have insufficient earnings to continue the arrangement.

I regret very much indeed that I shall not be able to present this matter to your Committee in person, but will be very glad to attend any subsequent meeting or to call on individual members of the Committee, if any of them so desire, at any other time which suits their convenience.

Yours very truly,

ALLEN,
General Manager.

W. P. Allen

AMG

NOTE.—"D 6410" is written in lower right corner of each page.

(Government Exhibit 463. In the District Court of the United States, Northern District of Illinois, Eastern Division. Before La Buy, J. Harry A. Harnden, Official Court Reporter)

"COPY"

Personal and Confidential.

SEPTEMBER 23, 1926.

Mr. JAMES LYNNAH,

*Ezec. Secretary, General Purchasing Committee,
General Motors Corporation, Detroit, Michigan.*

DEAR JIM: I am enclosing a letter addressed to you as Secretary of the Purchasing Committee, outlining the plan which we have developed to put into effect the suggestions made by your committee at the time of my discussion with them. In this plan we have gone the extreme limit, and I sincerely hope that it will appeal to the Committee and will produce the desired result.

I want to say a word to you about the desirability of keeping this matter confidential and treating it as an arrangement within the du Pont-G.M. family rather than as a mere concession in prices on individual commodities. A few days after I had my last discussion with the Committee, I received an urgent call from the General Manager of the Flint Paint and Varnish, Ltd. of Canada, advising me that General Motors of Canada had asked Flint to reduce prices immediately in accordance with the new scheme which du Pont was putting into effect with General Motors in the States. I have explained in my formal letter to you why it is not possible for us to include the Export Company and your foreign subsidiaries in this arrangement, and I again want to emphasize the importance of treating this whole matter in a confidential manner. It is obvious that we would be unable to continue this arrangement unless we can secure much higher prices from our other customers; and, if the terms of this arrangement become public knowledge in the trade, we would inevitably be forced to reduce prices generally, which would in turn wipe out the earnings which we purpose to return to you as a rebate under this plan.

With kind regards, I remain,

Sincerely yours,

W. P. Allen

AMG

encl.

NOTE.—"C 6410" is written in lower right corner of each page.

Mr. McHUGH. Mr. Harris, were there any indications or was there any evidence that discounts allowable under this policy were ever granted to any other purchasers?

Mr. HARRIS. I know of none.

Mr. McHUGH. General Motors Corp. then was the only company availing itself—

Mr. HARRIS. I cannot say that, sir; I know of no evidence; that is all I can say.

Mr. McHUGH. Mr. Harris, do you know for what period of time the so-called superdiscount policy was in effect?

Mr. HARRIS. It appears of record, I think, that it went out in 1932; at least that is the statement we made.

It went out—yes, in 1932. At the time that it went out, whether there was a connection or not, it appeared that the Fisher brothers had disposed of their General Motors stock, their large holdings in General Motors stock, and so no longer were a stockholder in the company.

Mr. McHUGH. Mr. Harris, was there some reason to believe that one of the reasons behind the superdiscount policy was to offer this special inducement in order to get the Fisher Body Co. to purchase more Du Pont products?

Mr. HARRIS. That was the charge we made.

Mr. McHUGH. Was there any—

Mr. HARRIS. That again is a matter of inference.

The next document, finishing up on the superdiscount, is committee No. 25. It was way ahead of everybody else.

On the second page of Government exhibit 495, Fisher Body Corp. had a discount of \$98,547.36 on purchases of over \$5 million.

Mr. McHUGH. Which is that, Senate No. 25?

Mr. HARRIS. Then the next document is—

Senator O'MAHONEY. Pardon me for just a minute.

Mr. HARRIS. Yes, sir.

Senator O'MAHONEY. All of these companies listed here in Mr. Richter's letter—

Mr. HARRIS. Yes, sir.

Senator O'MAHONEY (continuing). Which is exhibit No. 25 of the committee, namely, Fisher Body Co., Chevrolet, Buick, Oakland, Frigidaire, Delco Light, Olds Motor Works, AC Spark Plug Co., were General Motors subsidiaries or divisions, were they not?

Mr. HARRIS. Yes, they were.

Senator O'MAHONEY. What is the meaning of "all others"?

Mr. HARRIS. I think that is all other subsidiaries or divisions. I think it is simply to General Motors, not anybody else.

Senator O'MAHONEY. There was a discount, a superdiscount—

Mr. HARRIS. Yes.

Senator O'MAHONEY (continuing). Accorded only to General Motors?

Mr. HARRIS. As far as we know, sir; as far as their documents show.

Senator O'MAHONEY. All others, of course, amounted to only 4.45 percent.

Mr. HARRIS. I do not think that is anybody but General Motors.

Senator O'MAHONEY. Yes. But even so, I am pointing out—

Mr. HARRIS. Yes, sir.

Senator O'MAHONEY (continuing). It amounts to only 4.45 percent—

Mr. HARRIS. That is right.

Senator O'MAHONEY (continuing). Or \$8,906.09 out of a total discount amounting to \$200,136.79.

Mr. HARRIS. That is correct, sir.

(The document previously referred to follows:)

(Government Exhibit 495. In the District Court of the United States, Northern District of Illinois, Eastern Division. Before La Buy, J. Harry A. Harnden, Official Court Reporter)

COPY

E. I. DU PONT DE NEMOURS & COMPANY,
Wilmington, Delaware, July 10, 1928.

Personal and Confidential.

Mr. JAMES LYNAH,

Executive Secretary, General Purchasing Committee, General Motors Corporation, Detroit, Michigan.

DEAR SIR: With respect to the confidential superdiscount plan in effect between our Company and the General Motors Corporation, we are pleased to enclose herewith our check for \$200,136.79, representing the discount earned on total

purchases by your company of \$10,201,094.33 for the twelve months ending June 30, 1928, as set out in the attached memorandum.

You will note that the Fisher Body units earned \$98,547.36 of this superdiscount, based on purchases of \$5,022,097.45. Chevrolet Motor Company was second with total purchases of \$2,754,749.14, which earned a superdiscount of \$54,036.93, and Buick Motor Company was third, earning \$15,510.60, based on purchases of \$789,986.51.

The purchases and the amount of discount earned for the past twelve months' period by the larger units are summarized as follows:

	Purchases	Percent of total	Discount
Fisher Body Corp.....	\$5,022,097.45	49.24	\$98,547.36
Chevrolet Motor Co.....	2,754,749.14	27.00	54,036.93
Buick Motor Co.....	789,986.51	7.75	15,510.60
Oakland Motor Car Co.....	404,050.64	3.96	7,925.42
Frigidaire Corp.....	287,369.08	2.81	5,623.84
Delco Light Co.....	228,803.65	2.24	4,483.06
Olds Motor Works.....	151,876.39	1.49	2,982.04
A. C. Spark Plug Co.....	108,364.89	1.06	2,121.45
All others.....	453,796.58	4.45	8,906.09
Total.....	10,201,094.33	100.00	200,136.79

We trust that your accounting records will confirm our own figures. In case there are any differences we shall expect to hear from you.

Very truly yours,

WM. RICHTER,
General Manager.

Copy to: J. T. Stratman, Dir. of Purchases, Fisher Body Corp.; Geo. Allen, Dir. of Purchases, Buick Motor Co.; D. J. O'Keefe, Dir. of Purchases, Chevrolet Motor Co.; C. O. Miller, Dir. of Purchases, Oakland Motor Car Co.; D. F. Hulgrave, Dir. of Purchases, Cadillac Motor Co.; E. C. Beichler, (Frigidaire Corp.).

NOTE.—Illegible initial or other mark is written in top right corner of first page.

Mr. McHUGH. Mr. Harris, do these documents indicate that Du Pont was able to give the secret price concessions to General Motors by maintaining higher prices to its other customers?

Mr. HARRIS. They so state.

Mr. McHUGH. Do you know whether or not at this time the Du Pont Corp. was making substantial sales to other car manufacturers?

Senator O'MAHONEY. You mean at the time represented by—

Mr. McHUGH. At the time the secret concessions were being granted.

Mr. HARRIS. I think there is some exhibit somewhere showing the sales, but I do not know what they were, Mr. McHugh. I may be able to find that exhibit showing what sales they made to other companies. I do not know what they were.

Mr. McHUGH. I am speaking of other car manufacturers.

Mr. HARRIS. That is what I am talking about. I am inclined—I am inclined to think they did, especially some of their Duco sales, but I cannot tell you.

Mr. McHUGH. Was there any other evidence from these documents, Mr. Harris, concerning the total amount of the rebates which the General Motors Corps. received under this policy?

Mr. HARRIS. Yes, we have some. I would like to call your attention—we have some that give an indication.

I would like to call your attention, Mr. McHugh, however, to committee document 26, because committee document 26 is an official letter "Confidential" from the executive secretary of the committee to var-

ious members who were probably purchasing people and officials of General Motors.

Mr. McHUGH. You say the committee; that is the general purchasing committee?

Mr. HARRIS. Yes. They call it the Du Pont Co. superdiscount, July 12, 1928, and he forwarded a copy of the Richter letter, which I have just read.

Attention is called to the Delco-Light and Frigidaire discounts, as it is indicated that almost the entire discount should go to Frigidaire because of the separation from Delco-Light, effective January 1, 1928.

Then he talks about distribution:

For your convenience, the discount scale is repeated herewith, and he repeats it, and then he goes on to say:

It is noted that the superdiscount amounts to approximately 2 percent on the total purchases. It should be carefully noted, however, that had total purchases been increased by \$800,000 there would have been an additional \$100,000 discount, or 12½ percent of the \$800,000.

So they could have had more.

We all agree that it is desirable to maintain some healthy competition. However, if 80 percent of our purchases of material such as the Du Pont Co. is in position to supply, are given to them on an even basis, the earnings under the superdiscount contract will be materially increased, and it is urged that you cooperate to this end.

We will ascertain from the smaller using divisions the total volume of their purchases of such items and endeavor to gain their cooperation in increasing the volume of such purchases from the Du Pont Co. in case they are now placing more than 20 percent of such business outside.

Then you have a statement of it—

Senator O'MAHONEY. Who is Mr. Pratt to whom that letter was sent?

Mr. HARRIS. Mr. Pratt was probably at this time, certainly during some of the time, head of the accessory department, of all the accessory divisions, of General Motors and was, I believe, an official of this committee. I think he was chairman, is my impression. He was, incidentally, a former Du Pont man.

(The document previously referred to follows:)

(Government Exhibit 494. In the District Court of the United States, Northern District of Illinois, Eastern Division. Before La Buy, J. Harry A. Harnden, Official Court Reporter)

GENERAL MOTORS CORPORATION,
GENERAL PURCHASING COMMITTEE,
Detroit, Michigan, July 12, 1928.

CONFIDENTIAL

Subject: Du Pont Company superdiscount.

Attention of Messrs. G. G. Allen, W. F. Armstrong, D. F. Hulgrave, W. E. Kreitzer, C. O. Miller, D. P. O'Keefe, J. T. Stratman.

There is attached copy of letter from Mr. Richter of the du Pont Company, showing the volume of purchases by divisions from the du Pont Company for the 12 months ending June 30, 1928. Checks covering the discount earned will be forwarded to each division as promptly as possible from our Treasurer's Department in Detroit.

Attention is called to the Delco-Light and Frigidaire discounts, as it is indicated that almost the entire discount should go to Frigidaire because of the

separation from Delco-Light, effective January 1, 1928. Proper distribution between these divisions will be made by the Frigidaire organization.

For your convenience, the discount scale is repeated herewith:

Amount of Purchases:	Amount to be returned
\$8,000,000-----	0
9,000,000-----	\$75,000
10,000,000-----	175,000
11,000,000-----	300,000
12,000,000-----	450,000
Each additional 1,000,000-----	150,000

It is noted that the superdiscount amounts to approximately 2 percent on the total purchases. It should be carefully noted, however, that had total purchases been increased by \$800,000 there would have been an additional \$100,000 discount, or 12½ percent of the \$800,000. Had the purchases aggregated \$12,000,000 there would have been a further discount of 15 percent on the additional \$1,000,000 of business.

We all agree that it is desirable to maintain some healthy competition. However, if 80 percent of our purchases of material such as the du Pont Company is in position to supply, are given to them on an even basis, the earnings under the superdiscount contract will be materially increased, and it is urged that you cooperate to this end.

We will ascertain from the smaller using divisions the total volume of their purchases of such items and endeavor to gain their cooperation in increasing the volume of such purchases from the du Pont Company in case they are now placing more than 20 percent of such business outside.

Very truly yours,

JAMES LYNNAH,
Executive Secretary.

CC: Mr. J. L. Pratt.

NOTE.—First group of letters in writing at top of page reads "G. M. C."

Mr. HARRIS. Then, in your committee No. 27, you have again the 25-75 split. That is Government exhibit 497. That is a letter from Pratt to Staples.

We are anxious to benefit as far as possible under the superdiscounts arrangement with the Du Pont Co., always keeping in mind, however, that we do not want to extend our purchasing of Du Pont products to the point where we will not always have competition.

That is, they had two sources of supply, was their policy.

In my own mind I had arbitrarily set a figure that we should not buy in excess of 75 to 80 percent. I would be inclined to encourage our divisions to purchase at least 20 to 25 percent of the paint requirements on a competitive basis.

(The document referred to follows:)

(Government Exhibit 497. In the District Court of the United States, Northern District of Illinois, Eastern Division. Before La Buy, J. Harry A. Harnden, Official Court Reporter)

JULY 20, 1928.

Mr. GEORGES STAPLES,

E. I. du Pont de Nemours & Co., General Motors Building, Detroit, Michigan.

DEAR GEORGE: Last week when in Detroit you advised me that General Motors superdiscounts from the Du Pont Company on our purchases for the twelve months ending June 30, 1928, would have been considerably greater if Ternstedt Manufacturing Company, General Motors Truck, and Yellow Truck & Coach Mfg. Company had been purchasing their paint requirements from you.

In looking over the summary of total purchases made by General Motors I noticed that General Motors Truck purchases amounted to \$87,709.94; Ternstedt \$19,731.33; Yellow Truck & Coach \$66,985.60.

From your remarks I assume that you have information to the effect that the above figures do not represent a sizable part of the paint requirements of the above companies.

For my own information, so that I may take up this matter intelligently, I would appreciate it if you would indicate to me what percentage of the possible paint business of the above companies the Du Pont Company received for the twelve months ending June 30, 1928. We are anxious to benefit as far as possible under the superdiscounts arrangement with the Du Pont Company, always keeping in mind, however, that we do not want to extend our purchasing of DuPont products to the point where we will not always have competition. In my own mind I had arbitrarily set a figure that we should not buy in excess of 75 percent to 80 percent. In other words, I would be inclined to encourage our divisions to purchase at least 20 percent to 25 percent of their paint requirements from competitive sources.

With kind regards,

Very truly yours,

PRATT,
Vice President.

JLP:V

copy to Mr. Lynah, Secretary, General Purchasing Committee (not shown on original).

NOTE.—“G. M. C.—Products—Supplies & Materials—Paints—du Pont de Nemours, E. I.” is written across top of page, followed by illegible initial; and “7-30” and “8-4” are written in lower right corner, with a check mark under each and with a line drawn through each.

Mr. McHUGH. Will you explain the significance, Mr. Harris, of the next document that you have there.

Mr. HARRIS. United States Rubber?

Mr. McHUGH. Yes.

Mr. HARRIS. In 1927 a group of Du Ponts, that is, Irénée and Pierre, possibly Lammot, formed a syndicate with associates and relatives, to buy an amount of stock in the United States Rubber Co.

The syndicate purchased about 17 to 18 percent of the outstanding stock of United States Rubber, and shortly thereafter, when these purchases had been completed, a Mr. Davis who, at the time, was president of a Du Pont subsidiary, Viscaloid Co., became president of United States Rubber, and a board of directors chosen by him came into office.

About that time, very soon after, the Du Ponts individually had bought into this company; Irénée du Pont looked at the tire department, and was dissatisfied with what he saw. Irénée had the idea that it would be a good thing to do if they disposed of the tire department to some rubber company and concentrated on their plantations of rubber. He was quite proud of the rubber plantations and thought it would be a good idea to acquire additional plantation area.

He took up the matter with the president confidentially on February 12, 1929, as appears by committee exhibit 35, and he says that:

While negotiating to lease our tire business to Goodyear we should negotiate for a similar leasing of their plantations by United States Rubber Co.

He thought the Department of Justice would look very favorably on that.

(The document referred to follows:)

(Government Exhibit 1064. In the District Court of the United States, Northern District of Illinois, Eastern Division. Before La Buy, J. Harry A. Hamden, Official Court Reporter)

FEBRUARY 12, 1929.

Confidential.

F. B. DAVIS, Jr.,

President, United States Rubber Co.,

1790 Broadway, New York City.

DEAR DAVE: To my mind the most precarious division of the rubber business is the manufacture and sale of automobile tires. It seems to me likely that sooner or later Chrysler or General Motors will acquire tire-producing facilities so as to make their own tires, thereby saving selling expense both on original equipment and renewals which could be furnished through their own dealers. If one of those companies should make such a move, it is likely the others would follow. This would leave such tire manufacturers as had not sold out their business in a very trying position.

In conference with Mr. Litchfield sometime ago, when consolidation was being talked about, it became quite evident that he would look with great favor on absorbing the U. S. Rubber Company's tire business, especially as it would seem he desires to be the outstanding man in the tire industry.

We probably cannot sell our tire business as the plant is under the indenture of our bonds. We could presumably lease it for a period of thirty or fifty years, coupled with an option that the lessee may purchase the property at the termination of the lease, or sooner if the lessor can find means of accomplishing the transfer.

Suppose you were to offer to lease our cotton mills and tire-manufacturing business to Goodyear for an annual rental of, say, \$4,000,000.00, engaging to use our best offices to transfer the goodwill of our tire business and customers to them. This would represent a lease payment of 8 percent on the volume of business of the year 1927 (\$50,000,000.00), or only 4 percent on what I assume to be our capacity to produce tires (\$100,000,000), as Goodyear makes upward of 10 percent on their tire turnover, and accretions to turnover would yield them a still greater profit. This would be a most desirable acquisition for Goodyear.

After the lease was arranged, it would, of course, be provided with materials and supplies, and finished product would be taken over by the lessee at cost, and the Accounts Receivable would soon liquidate themselves. It would seem that working capital in your Tire Division must be in excess of \$24,000,000.00; consequently the company would find itself in possession with that amount of money within, say, a year's time. This would be sufficient to pay off the 7½-percent note issue due in August 1930, with perhaps six or seven million dollars over, which later would be available for purposes described below:

While negotiating to lease our tire business to Goodyear, we should negotiate for a similar leasing of their plantations by U. S. Rubber Company. We could manage their 15,000 acres of producing plantation cheaper and better than could Goodyear. If we undertook to pay, say, \$600,000.00 a year, or 10 cents per pound, on their last year's production of rubber, it would be an offset to that extent of the funds received from them for our tire plants, and the liquidation of tire working capital, above mentioned, would provide funds for more rapid development of our plantations.

I think that the Department of Justice would look favorably on such an arrangement, because it would enable the largest plantation owner to get into a financial condition to develop its plantations and to operate under the best possible management the only other American plantations. The Department of Justice could hardly object to Goodyear increasing its tire business by some fifty million dollars, as it would still be a minority producing of the total country's requirements, and especially so as we could represent truthfully that our tire business had not been successful and are most anxious to withdraw from it.

The figures given above are more or less hypothetical—perhaps the lease money should be changed in one or both cases, but the principal is illustrated.

If this were carried out, the United States Rubber picture would be somewhat as follows:

Sales-----	\$140, 000, 000. 00
On which 10 percent net might be conservatively expected—a profit of-----	\$14, 000, 000
Lease (net income from lease of tires)-----	3, 400, 000
Prospective profits from consolidated plantations, as of last year, at 10 cents per lb., 30,000,000 lbs-----	3, 600, 000
Total-----	21, 000, 000
Less:	
Interest on 5-percent bonds-----	2, 933, 250. 00
Interest on 6½-percent notes-----	1, 430, 000. 00
Interest on 6-percent bonds (D. R. Co.)-----	158, 000. 00
Total interest, say, \$4,500,000, leaving for stock \$16,500,000.	
Preferred dividends-----	5, 200, 000. 00
For common stock, or, say, \$7.50 a share-----	11, 300, 000. 00

Summarizing the advantages:

- 1st. We eliminate the large debt coming due in 1930.
- 2nd. We drop the most precarious branch of our business, and one which has not paid in the past.
- 3rd. We materially enlarge our rubber plantations, which I think have a great future, and provide funds for their further enlargement.
- 4th. We bring in the near future the time when our common stock may enjoy its dividends.

This is passed along to you merely as a suggestion.

Sincerely yours,

NOTE.—“D 131 KK” is written and underscored by hand at upper right of first page. “FILE COPY” is printed across each page.

Mr. HARRIS. Around the same time, the following year, as a matter of fact early in the following year, General Motors made a survey of tire companies with the idea of possibly buying a tire company to manufacture their own tires, and among the places surveyed was United States Rubber.

Wilson, Charles E. Wilson, rendered a report, which is committee exhibit 29, in which he said these things: that the tire business was apparently in a very bad way, the prices were terrible, and he made certain recommendations which resulted apparently in the whole idea being turned down.

On April 24, after full discussion by the joint executive and operations committee, a motion was carried in which it was stated that “we discontinue our efforts to enter the tire business.”

Mr. McHUGH. Mr. Harris, do these documents indicate the reasons why the General Motors Corp. decided not to go into the tire-producing business?

Mr. HARRIS. Yes. They set up a whole list of reasons. One of them is that factory costs apparently were high; no patent situation strong enough to control quality; commercial practices not very sound; substantial credits not justified; and I think, at times, he said, that they were buying for less than cost, that the automobile companies were able to buy at less than cost, from tire companies.

Tires were sold to car manufacturers at less than cost.

Mr. McHUGH. Is there some indication that the tire producers were absorbing their losses by replacement?

Mr. HARRIS. Yes. That was an old practice in the tire industry, and it was originally entered into with the idea that replacement

sales through retail channels at regular prices would make up for the loss of profit on original equipment sales.

Mr. McHUGH. Was that advanced as one of the reasons why General Motors Corp. decided not to go into the tire business?

Mr. HARRIS. The reasons are not given. They just give us a minute and say—they gave a minute saying that they had discussed it, but they did have the report of Wilson before them.

(The document referred to follows:)

(Government Exhibit 1069. In the District Court of the United States, Northern District of Illinois, Eastern Division. Before La Buy, J. Harry A. Harnden, (Official Court Reporter)

GENERAL MOTORS CORPORATION

To: Operations Committee.

From: Mr. C. E. Wilson.

Subject: Survey of Tire Industry.

Date: June 3, 1930.

SURVEY OF TIRE INDUSTRY

1. Volume of business.—The tire companies produced 71,000,000 casings and 75,000,000 tubes approximately in the year 1929. The estimated sales values of this business at the factories totals \$650,000,000.

2. The leading company in the business is the Goodyear Tire and Rubber Co., with a capacity of 75,000 casings and tubes per day. In 1929 their total sales amounted to \$256,000,000 with a net profit of \$19,864,000.

This company has approximately \$250,000,000 invested capital. Approximately one-half of their total sales are sales of casings and tubes.

3. The Plant of the Kelly Springfield at Cumberland, Maryland, and the tire and tube plants of the U. S. Rubber Company at Detroit, Indianapolis, Kitchener in Canada, were visited and operating figures for the year 1929 and the first three months of 1930 were obtained from these two companies. Each of the companies as shown by the following figures lost money for the fifteen months' period and each of them have a very high net investment compared with their sales volume.

Statement of income

	1929			3 months 1930			
	Percent to sales	United States	Percent to sales	Kelly	Percent to sales	United States	Kelly
Net sales	100.0	\$57,341,147	100.00	\$27,428,041.48	100.00	\$10,785,927	\$4,260,072.28
Cost of sales	88.8	50,912,070	82.53	22,636,919.06	90.36	9,745,885	3,405,029.85
Gross profit	11.2	6,429,077	17.47	4,791,122.42	9.64	1,040,042	854,442.43
Administration, sales, advertising, etc.	20.3	11,660,844	22.37	6,147,540.32	25.55	2,751,588	1,228,780.20
Net loss	9.1	5,231,767	4.90	1,356,417.90	15.91	1,711,546	374,337.77

	Investment Dec. 31, 1929	
	United States	Kelly
Cash (4.5 percent of sales)	\$2, 580, 352. 00	\$1, 234, 262. 00
Accounts and notes receivable less reserves	13, 517, 538. 00	3, 819, 625. 00
Inventories	16, 800, 715. 00	6, 372, 242. 00
Current assets	32, 958, 605. 00	11, 426, 129. 00
Prepaid expense	681, 577. 00	181, 721. 00
Plant investment	28, 813, 950. 00	8, 032, 148. 00
Other investments		101, 745. 00
Total	62, 472, 138. 00	19, 801, 743. 00
Investment per dollar net sales	1. 09	. 722

4. Tires are sold to our manufacturers at less than factory cost. This is an old practice in the tire industry and was originally entered into with the idea that replacement sales thru retail channels at long prices, would make up for the loss of profit on original equipment sales.

An analysis of the operations of these two companies indicate, however, that they are losing money on their retail business as well as on their original equipment business due to their high cost of distribution which has been increased by the volume of business flowing thru the mail order houses.

The U. S. Rubber companies are showing substantially twice the percentage loss on their retail business that they do on their original equipment business, while in the case of Kelly Springfield Company the percentage loss is approximately the same in both Divisions of the business.

5. The factory costs were obtained from the two companies on the sizes of tires used by our Chevrolet, Buick, Olds, and Oakland Divisions. The net purchase price was obtained from the purchasing agents at each of the Divisions and a comparison of the factory costs of these two companies with the prices our Divisions are paying, show that on the average, we are purchasing tires for 14 percent less than factory cost.

Since the cost of material varies from 70 to 75 percent, figured on the cost of rubber and cotton, when the present tire prices were made, it is a very serious matter for a tire company to be selling a substantial part of their production to car companies at substantially less than factory cost.

6. There is no patent situation in the tire industry which is strong enough to be used in controlling the quality or price of tires. The officials of the United States Rubber Company believe they have a valuable patent situation, but in the opinion of the engineers and patent attorneys who have recently looked into the matter for us, we have decided that their patent situation is of no value.

7. The commercial practices in the tire business have not been very sound as it has been customary to extend substantial credits where the credits apparently were not justified and in other areas to consign stocks of tires. It is also current practices to sell tires with freight prepaid not only to dealers, but also to car manufacturers.

These practices have resulted in substantial losses and large inventories in invested capital. A material reduction in work and process and tire inventories could probably be made, but it would be impossible to get the sales investment ratio that we ordinarily expect, unless the whole tire industry would change the accepted practices in the business.

8. The replacement tire business, until quite recently has been handled entirely by specialized tire dealers. Recently the chain stores and super service stations have gone into the tire business with considerable success and have undermined the older form of distribution. The Goodyear Tire and Rubber Company have had substantial investment in retail outlets for some time. Last year the Firestone Tire and Rubber Company arranged for \$60,000,000 new capital which was understood to be primarily for investment in super service stations and retail outlets.

The Goodrich Tire and Rubber Company have recently arranged for an additional financing of \$33,000,000, a substantial portion of which, we understand, is to be invested in retail outlets.

9. A quick survey of the dealers handling General Motors products does not indicate that any of them would make ideal outlets for retail tire sales. An increasing percentage of the business is being handled by chain stores and super

service stations. Car dealers and United Motor Service Branches and authorized service stations are not properly set up to compete with these two forms of distribution.

10. The information we have obtained about the tire industry, indicates that neither of the tire companies investigated, would be a profitable investment unless the following changes could be brought about in the business.

1. An increase of approximately 10 percent in the prices charged automobile companies for original equipment.

2. A system of retail distribution worked out possibly with some large oil company or a radical change made in the United Motor distribution which would give a competitive set up with super service stations and chain stores.

3. A plan would have to be worked out so that the relatively small tire company, which General Motors Corporation would own, would be operated at capacity at all times in order to obtain minimum cost.

C. E. WILSON.

Mr. HARRIS. Shortly after that, General Motors entered into a contract with——

Mr. McHUGH. May I ask you just what properties the General Motors Co. made a survey of before making their decision not to go into rubber?

Mr. HARRIS. They visited the plant of Kelly-Springfield, the tire and tube plants of United States Rubber, Kitchener in Canada.

Mr. McHUGH. What did the corporation then decide to do after concluding it would not go forward with the tire-producing project?

Mr. HARRIS. They entered into a contract with United States Rubber for a very large proportion of their tires. That is committee exhibit 42, Government exhibit 1092.

Mr. McHUGH. Will you explain in general what the provisions of this United States Rubber contract were.

Mr. HARRIS. Well, the principal provision was what is known as the formula price; that is, the price that was based on the cost of rubber and the cost of cotton and the manufacturing cost. Under this——

Mr. McHUGH. Excuse me, Mr. Harris, but did this contract provide that General Motors would take any fixed percentage of its requirements from the United States Rubber Co.?

Mr. HARRIS. Yes; most of the divisions, in fact, all of the divisions, in the United States, were to take 50 percent, and by a supplemental letter almost immediately after, Oldsmobile took another 50, Oakland, Pontiac, took another 50, Cadillac took another 15, and GMC Truck took another 50.

Mr. McHUGH. That is in addition to the 50 percent provided by contract?

Mr. HARRIS. That is right. Some of them were taking a hundred percent.

The financing of the rubber and the cotton purchases was done by General Motors. General Motors bought the crude rubber, and the United States Rubber Co. bought the cotton, and General Motors paid the price.

When the time came to bill for the tires then, of course, the costs of the rubber and cotton would be included in the tire price.

There was a provision that General Motors could charge up to 12½ percent for the use of the money apparently, 12½ percent on that price which they had advanced: but, of course, they paid it again when they paid the bills, perhaps about a month later.

Mr. McHUGH. Do I understand by this, then, that General Motors actually purchased the raw rubber and added 12½ percent to that and resold it to the United States Rubber Co.?

Mr. HARRIS. Well, it was not to exceed 12½ percent, yes, sir; and then sold it to the rubber company.

Mr. McHUGH. United States Rubber then sold the tires?

Mr. HARRIS. Sold the finished tires and, of course, that cost was in the tire. It amounted probably to the use of some money the 12½ percent, for a month or so. The difference was between the price that they had charged to United States Rubber and the price they paid for the tire.

Another provision was—that was entered into—was that the United States Rubber Co. should charge what were known as billing prices.

The price that was to be paid by General Motors was to be secret. The price that was to be charged to the divisions was what was known at the billing price, which was given to United States Rubber by General Motors.

This price, it appeared, was based on the going competitive price. It also appeared that the price was pretty close to what the divisions could get elsewhere. In other words, one of the measures of that billing price was the price at which General Motors bought 50 percent of Chevrolet's requirements, because the 60 percent of Chevrolet's requirements were bought elsewhere.

When the General Motors got what we called the formula price, the ABC price, the cotton, rubber price, then it would pay, however, on the billing price that was billed to the division, and would receive a refund or a rebate from United States Rubber.

(The document previously referred to follows:)

(Government Exhibit 1092. In the District Court of the United States, Northern District of Illinois, Eastern Division. Before La Buy, J. Harry A. Hamden, Official Court Reporter)

GENERAL MOTORS CORPORATION

OFFICE OF THE SECRETARY

File No. 5260.

BETWEEN UNITED STATES RUBBER COMPANY OF NEW YORK, N. Y., AND GENERAL MOTORS CORPORATION OF DETROIT, MICH.

Subject: Manufacturing and Selling Agreement, Manufacture, Sale and Purchase of Tires. Addendum Relating to Spare Tires

Date: January 1, 1931.

Received from: C. E. WILSON

SECRETARY BY LWC.

COMPTROLLER BY _____.

Indexed: March 16, 1931.

SECRETARY BY LWC.

MANUFACTURING AND SELLING AGREEMENT

United States Rubber Company, a New Jersey corporation, hereinafter called "Rubber Company," and General Motors Corporation, a Delaware corporation, hereinafter called "General Motors," upon the mutual obligations herein contained, hereby contract as follows:

First: Manufacture, Sale, and Purchase of Tires. The Rubber Company will manufacture and sell to General Motors and General Motors will purchase from the Rubber Company, and pay for or cause to be paid for, under the terms hereof,

such number of pneumatic rubber tires for motor vehicles (with flaps, except for certain sizes and types indicated in the annexed "Exhibit B") as may be required during the term, and any extended term hereof:

(a) To equip fully for operation, exclusive of spare tires, at least fifty per cent (50%) of all of the motor vehicles manufactured or produced and sold in (or exported from) the United States and Canada by each of the various present and future divisions and/or subsidiaries of General Motors; and to supply at least fifty per cent (50%) of all spare tires sold as original equipment on all of the motor vehicles so manufactured or produced and sold (or exported).

A tire shall be taken to be one casing and one inner tube (and flap, unless otherwise indicated in said "Exhibit B") to fit such casing. A spare tire shall be taken to be any tire used as original equipment beyond the number of tires required to supply the motor vehicle in question with a complete running set of tires. General Motors agrees to resell all such tires only as original equipment on said motor vehicles and represents and agrees that its policy shall be to discourage the removal by its dealers and the dealers of its divisions and subsidiaries, of such tires and the substitution therefor of tires manufactured by others than the Rubber Company.

Second: Reports Relative to Spare Tires: General Motors shall report or cause to be reported to the Rubber Company not later than the fifteenth day of each calendar month during the term of this agreement the number of tires sold by the Rubber Company hereunder which shall have been appropriated by General Motors and its various divisions and subsidiaries during the calendar month next preceding such month, for use as spare tires. Such report shall state the number of tires of each size and type so appropriated and the respective divisions and/or subsidiaries by which they shall have been appropriated and the number of tires which shall have been appropriated by each division and/or subsidiary as a single spare tire and the number which shall have been so appropriated in groups of two spare tires per motor vehicle.

Third: Quality: All tires sold hereunder in the United States shall be United States Royal Cord tires and all tires sold hereunder in Canada shall be Dominion Royal Cord tires, at all times during the continuance of this agreement of a quality and workmanship at least equal to the quality and workmanship of United States Royal Cord or Dominion Royal Cord casings and tubes, as the case may be, being sold by the Rubber Company on the date of execution of this agreement. The Rubber Company will at its own expense and at all times during the continuance of this agreement carry out with respect to the tires supplied by it hereunder the standard warranty policy now being pursued by it with the respective dealers, representatives, and agents of General Motors selling motor vehicles equipped with tires manufactured by the Rubber Company in the United States and Canada.

Fourth: Orders: On or before the fifth day of each calendar month until the appropriate month before the expiration or termination of this agreement, General Motors shall give to the Rubber Company a notification which shall consist of three items, as follows: (a) a schedule constituting a firm order, for stated quantities and sizes of tires to be shaped to its respective divisions and subsidiaries during the next succeeding calendar month; (b) a schedule constituting a tentative order, subject to revision, for stated quantities and sizes of tires to be shipped to its respective divisions and subsidiaries during the second succeeding calendar month, and (c) a schedule constituting an estimate for information purposes only, of the quantities and sizes of tires that may be desired by its respective divisions and subsidiaries during the third succeeding calendar month.

Fifth: Concerning Purchases of Crude Rubber by the Rubber Company for General Motors: It is understood that General Motors desires to purchase and supply the crude rubber to be used in manufacturing tires hereunder, but will use the purchasing facilities of the Rubber Company in doing so. To that end, General Motors shall from time to time, and in each instance duly in advance of the needs of the Rubber Company, direct the Rubber Company to procure for the account of General Motors the crude rubber to be used in the manufacture of tires hereunder. General Motors at such times shall specify the weights of crude rubber from time to time to be procured. General Motors shall also specify at such times the month of delivery of, and prices to be paid for, such weights of crude rubber. The Rubber Company shall then, in each instance, endeavor to buy and/or upon consent of General Motors to appropriate from its own stocks, crude rubber in the weights and for the deliveries so specified at such times as

the prices of No. 1 Ribbed Smoked Sheets are at or under the prices so specified, but the crude rubber so bought or appropriated may be either No. 1 Ribbed Smoked Sheets or otherwise as the Rubber Company deems suitable for the manufacture of the tires to be supplied hereunder, and crude rubber other than No. 1 Ribbed Smoked Sheets so bought may be bought either at the specified prices or otherwise, depending upon the market prices of the various grades of crude rubber bought. The use by the Rubber Company in the manufacture of tires hereunder of rubber other than No. 1 Ribbed Smoked Sheets shall at no times, however, be sufficient to cause any lessening of the standard of such tires as hereinbefore specified. Upon the receipt or appropriation of any such crude rubber the Rubber Company shall charge and invoice General Motors and upon demand of the Rubber Company, General Motors shall pay in cash to the Rubber Company for the crude rubber so bought or appropriated at the prices specified as aforesaid.

(It is recognized that the Rubber Company will use in accordance with the various compounding methods in manufacturing tires hereunder, not only No. 1 Ribbed Smoked Sheets but also certain more expensive and certain less expensive grades, and the prices of No. 1 Ribbed Smoked Sheets have been chosen as the fair standard prices at which all crude rubber of all grades shall be deemed to have been purchased, regardless of the price actually paid.)

Sixth: Resale to the Rubber Company by General Motors of Crude Rubber: On the fifth day of each calendar month during the term hereof General Motors shall charge and invoice to the Rubber Company, and on the twentieth day of such month the Rubber Company shall pay to General Motors, in cash, for the total weight of crude rubber required for use and/or used in manufacturing the various sizes and types of tires which shall have been ordered for delivery during the next succeeding month, at such prices per pound as General Motors shall specify. Such specified prices shall not at any time exceed, however, twelve and one-half percent ($12\frac{1}{2}$ percent) over the average, per pound, cost to General Motors of all crude rubber previously charged to General Motors by United States under Clause Fifth hereof and existing and remaining at such time unapplied to manufacturing purposes hereunder. The total weight of crude rubber referred to in this Clause Sixth shall be computed in accordance with the weight specifications for crude rubber required for the various sizes and types of tires, as contained in Item A of "Exhibit B" hereto annexed. Said exhibit is more fully explained in Clause Eighth herein.

Seventh: Concerning Fixing the Cost of Cotton for Ply Cord to be Used in Manufacturing Hereunder: It is understood that, although General Motors does not desire to purchase and supply the cotton to be used in manufacturing tires hereunder (as it will do in the case of crude rubber as aforesaid), and although the Rubber Company will purchase and supply, on its own account, the actual cotton to be so used, still the parties desire to adopt a certain procedure for fixing the agreed costs, for the purposes of this agreement, of the cotton for ply cord to be used in such manufacturing. To that end, on the fifth day of each calendar month (or the next business day if such fifth day be a Sunday or a legal holiday) during the term hereof, the Rubber Company shall charge to General Motors, and on the twentieth day of such month General Motors shall pay in cash to the Rubber Company, on account of the total weight of cotton required for ply cord to be used in the manufacture of tires ordered by General Motors for delivery during the next succeeding calendar month, a sum calculated upon said total weight of cotton, at a rate per pound equal to the closing spot quotation per pound for $\frac{3}{8}$ " Middling staple cotton announced by the New York Cotton Exchange on the same (i. e., fifth or next business) day of such month. General Motors shall thereafter charge to the Rubber Company, and on the twentieth day of such month the Rubber Company shall pay to General Motors, in cash, on account of such weight of cotton, a sum calculated upon said weight at such rate per pound as General Motors shall specify. Such specified rate will not exceed, however, twelve and one-half percent ($12\frac{1}{2}$ percent) over the amount previously charged General Motors by the Rubber Company on account of such cotton. The total weight of cotton for ply cord referred to in this Clause Seventh shall be computed in accordance with the weight specifications for cotton for ply cord required for the various sizes and types of tires ordered, as contained in Item B of "Exhibit B" hereto annexed. Said exhibit is more fully explained in Clause Eighth herein.

Eighth: Prices of tires to General Motors. General Motors shall be obliged to pay to the Rubber Company on the twentieth day of each calendar month following the shipment of tires hereunder the "prices to General Motors" (as

distinguished from the billing prices to the various divisions and subsidiaries of General Motors hereinafter described) of all tires supplied to General Motors and its divisions and subsidiaries hereunder during the preceding calendar month, to the extent that the same shall not them have been paid for by the said divisions and subsidiaries. The prices to General Motors of said tires supplied to it and its divisions and subsidiaries for resale in or export from the United States shall be arrived at by reference to "Exhibit B," hereto annexed, and by certain calculations as follows:

Exhibit B contains a list of the various sizes and types of tires to be supplied by the Rubber Company as equipment for the various motor vehicles now being manufactured or produced by the present divisions and subsidiaries of General Motors. This exhibit shall be extended by notification from General Motors to the Rubber Company from time to time of new varieties of motor vehicles to be so manufactured, and of the sizes and types of tires suitable to equip the same. Said exhibit also contains the required respective weights of crude rubber (Item A) and of cotton for ply cord (Item B) to be used in the manufacture of four tires (i. e. four casings and four tubes, and flaps if required, hereinafter called a "set"), of each of the said various sizes and types. Said exhibit also contains (Item C) the stated respective agreed charges to be made by the Rubber Company to General Motors, per set, for all items entering into the price of such set other than the costs of the materials mentioned in said Item A and B. The price to General Motors for each of said respective sets shall be the sum of the following:

(a) The cost to the Rubber Company of the required weight of crude rubber for such set as such weight is indicated in "Exhibit B" (including any extensions of and/or changes made in such exhibit pursuant to Clauses Eighth and Fourteenth hereof) at the price per pound charged the Rubber Company by General Motors under Clause Sixth hereof.

(b) The cost to the Rubber Company on account of the required weight of cotton for ply cord for such set as such weight is indicated in "Exhibit B" (including any extensions of and/or changes made in such exhibit pursuant to Clauses Eighth and Fourteenth hereof) at the rate per pound charged the Rubber Company by General Motors under Clause Seventh hereof.

(c) The charge by the Rubber Company to General Motors on account of such set for all items entering into the price of such set other than the costs mentioned in (a) and (b) above, as fixed in Item C of "Exhibit B" (including any extensions of such exhibit made pursuant to Clause Eighth hereof and/or changes of such exhibit from time to time on account of changes in the size, construction and compounding of the tires in such set under Clause Fourteenth hereof, and any other changes mutually agreed upon to meet any increased costs resulting from changed conditions).

The prices to General Motors of said sets supplied for resale in or export from Canada shall be the same as the above respective prices, plus twelve and one-half per cent (12½ per cent) of said respective prices on all balloon tires and ten per cent (10 per cent) of same on all high pressure tires. At the end of each calendar year, however, adjustment shall be made between the parties to eliminate the difference, if any, made in computing the amounts represented by said percentages, by the Rubber Company's paying to General Motors (under Clauses Sixth and Seventh hereof) a different price on account of the crude rubber and the cotton for ply cord in the Canadian tires, from the cost of such crude rubber and cotton to General Motors.

Ninth: Billing Prices to Divisions and Subsidiaries of General Motors: General Motors shall from time to time, and in no event later than the requested shipment dates of the respective lots of tires supplied to its divisions and subsidiaries hereunder, agree with the Rubber Company as to the prices at which the Rubber Company shall bill the respective said divisions and subsidiaries for the tires so shipped, and the Rubber Company shall bill said divisions and subsidiaries for said tires at the said respective prices, provided, however, that the subsidiary and affiliated companies of the Rubber Company selling tires hereunder in Canada may bill said tires at higher billing prices (chosen by them, provided they are no higher than the competitive prices at which other manufacturers of tires are selling tires to manufacturers of motor vehicles in Canada). General Motors shall cause said divisions and subsidiaries to pay to the Rubber Company pursuant to the terms of payment hereinafter specified the prices so billed, and it is agreed that adjustments of accounts required, if any, on

account of any differences between said billing prices to said divisions and subsidiaries and the "prices to General Motors" for said tires as specified in Clause Eighth hereof shall be made by payment of cash by one party to the other, as required, on the twentieth day of the month following the month of delivery of the tires in question.

Tenth, Title to Crude Rubber: Insurance: Upon the inception of liability of carriers accepting delivery in New York or other points of delivery for storage and/or shipment to the Rubber Company's plants, of crude rubber purchased, or upon the appropriation of crude rubber appropriated, pursuant to Clause Fifth herein, the crude rubber delivered or appropriated shall become the property of General Motors, but shall nevertheless remain in the possession or control of the Rubber Company for use under this agreement. The Rubber Company shall be obliged to use due diligence to provide and collect insurance on such crude rubber and General Motors shall reimburse the Rubber Company for all cost thereof attributable to General Motors' interest therein. Such insurance may be carried and claims and collection for loss may be made in the name of the Rubber Company and/or its subsidiaries, if the Rubber Company desires, and the Rubber Company shall account to General Motors for its interest in the proceeds. The Rubber Company shall be deemed to have used due diligence in providing and collecting such insurance if it does such acts from time to time with respect thereto as it may then be doing currently for the purpose of providing and collecting insurance upon its own crude rubber similarly situated. Insurance policies shall be subject to the inspection and approval of General Motors.

Eleventh: Transportation, handling and storage Charges on Crude Rubber: General Motors shall pay to the Rubber Company, on demand of the Rubber Company, one-fourth of one cent per pound on all crude rubber purchased on appropriated pursuant to Clause Fifth herein as reimbursement to the Rubber Company for the agreed share of the transportation and handling expense of the Rubber Company on account of said crude rubber which is to be borne by General Motors. Said charge shall be considered for all other purposes of this agreement as a part of the cost to General Motors of all such crude rubber. The Rubber Company may also charge to General Motors, and upon demand of the Rubber Company, General Motors shall pay to the Rubber Company, reasonable storage charges on all crude rubber held by the Rubber Company for General Motors over and above a six months' supply for General Motors' requirements of tires hereunder.

Twelfth: Delivery and Payment: All tires supplied hereinunder shall be shipped to the designated divisions and subsidiaries of General Motors in bulk, without wrappings or cartons. Terms of delivery: f. o. b. carriers, the Rubber Company's plants of manufacture. Terms of payment: net twentieth proximo.

Thirteenth: Additional Taxes and Duties: General Motors agrees that the Rubber Company may add to the prices to General Motors of any tires supplied hereunder all amounts of new or additional or increased sales taxes, import duties, or other levies or charges imposed by any governmental authority upon the transactions had or materials or products handled hereunder which the Rubber Company shall be required to pay over and above any payments now required by any governmental authority upon like transactions, materials, or products. Such increase in prices shall be apportioned as nearly as reasonably may be to the various sizes of tires furnished hereunder.

Fourteenth: Changes in Specifications: It is agreed that General Motors may from time to time specify to the Rubber Company and cause the Rubber Company to make changes in the sizes and/or construction (not inconsistent with standard United States Royal Cord or Dominion Royal Cord tire construction and not impairing quality) of tires to be supplied for one or more of the respective varieties of motor vehicles specified in or added to "Exhibit B." The Rubber Company may from time to time suggest and make changes in construction or compounds in line with changes in standard construction of or compounds used in its United States Royal Cord and Dominion Royal Cord tires. The parties agree that their engineers shall cooperate in the exchange and utilization of advice and information relative to the practicability of any such change in size or construction. In case of any such changes the Rubber Company shall specify to General Motors resulting changes to be made in Items A, B, and C in "Exhibit B" and "Exhibit B" shall thereupon be changed accordingly. Thereafter the prices to General Motors of such newly sized and/or newly constructed tires shall be figured and changed in accordance with the revised "Exhibit B." In case any such change shall be made applicable to shipments for which General Motors shall have given firm orders and/or tentative orders to supply which the Rubber Company shall have manufactured tires hereunder, the Rubber Company shall use its

best efforts for a period of ninety days from the time such change becomes effective to dispose of the tires so manufactured prior to such change and not delivered to General Motors, at such prices as will relieve General Motors from the payment of the price of such tires, without loss to the Rubber Company; provided, however, that all tires remaining on hand at the end of such ninety day period shall immediately become the property of General Motors and shall be paid for by General Motors, on demand of the Rubber Company, at the prices to General Motors specified herein and said tires shall be held or disposed of for the account of General Motors by the Rubber Company at General Motors' direction, cost and expense including reasonable storage charges for holding said tires after one hundred and eighty days from the time such change shall have become effective. It is understood that notwithstanding anything in this agreement to the contrary, should any tires remain on hand as above set forth and General Motors finds it cannot use them for standard or initial equipment, it may nevertheless take them over from the Rubber Company hereunder and dispose of them to its dealers, or use them as spare tires, or make such other disposition of them as it sees fit.

Fifteenth: Contingencies: The parties hereto shall not be liable, the one to the other, for failure of performance by either under this agreement to the extent that such performance is prevented or delayed by governmental regulations, war, fire, floods, strikes, public insurrections, labor troubles, interruption of transportation facilities or shortage of fuel or raw material or by any other cause or causes beyond their reasonable control, and in any such contingency General Motors agrees to accept as full and complete performance by the Rubber Company hereunder such quantities of tires ordered by General Motors as the Rubber Company is able under the circumstances to deliver.

Sixteenth: Arbitration: All differences, disputes, or controversies as to the interpretation and/or performance by either party of any of the terms hereof shall be subject to arbitration in New York, New York, in accordance with the laws of the State of New York and the rules, if any, then existing of the American Arbitration Association, each party selecting at its own expense one arbitrator, and in case of disagreement between them, the two arbitrators selecting a third arbitrator who shall make the deciding conclusion. The compensation of the third arbitrator, if any, and any miscellaneous expenses of arbitration shall be borne equally by the parties. A judgment of the Supreme Court of the State of New York shall be rendered on any award of the arbitrators made pursuant to this paragraph and shall be entered in the County of New York.

Seventeenth: Title to Tires: Title to all tires manufactured hereunder shall be and remain in the Rubber Company until they are shipped, except, however, that title may pass earlier under conditions mentioned in paragraph fourteenth hereof.

Eighteenth: Transfer of Benefits and Obligations: This agreement shall enure to the benefit of and bind the respective parties and their successors in their respective businesses of manufacturing tires or the respective varieties of motor vehicles referred to herein, but may not be assigned otherwise by either party without the consent of the other.

Nineteenth: Term: This agreement shall be effective for a term of twenty-one months, beginning January 1, 1931, and ending September 30, 1932, inclusive, and shall be automatically extended and shall continue thereafter unless and until terminated as of September 30, 1932, or any March 31 or September 30 thereafter by notice in writing of such termination given by either party to the other on or before the April 1 or October 1 next preceding such effective date of termination. Any notice serving any purpose under this agreement may be given by depositing the same in writing enclosed in a sealed postpaid envelope addressed to the party to which notice is being given at its principal office in New York, New York, in a United States Post Office or in any letter box regularly maintained by the United States Government, for transmittal in the mails to said party.

Twentieth: Captions: The captions at the beginnings of the clauses herein shall not be considered in construing any terms in this agreement.

Twenty-first: New York Law Applicable: This agreement is executed in the State of New York and all questions relative to the validity, interpretation and/or performance of this agreement shall be resolved in accordance with the laws of said State.

Twenty-second: Acts of the Parties Through Subsidiaries: It is agreed that, except where the context herein indicates otherwise, each of the parties may do any acts required of it hereunder or referred to herein as its acts, through its

divisions, subsidiaries and/or affiliated companies; and references to each party herein shall include, unless the context indicates otherwise, the divisions, subsidiaries and/or affiliated companies of the party.

In Witness Whereof, the Rubber Company has caused its corporate name to be hereto subscribed by L. D. Tompkins, its Vice President, and such signature to be attested and its corporate seal to be hereunto affixed by Eric Burkman, its Secretary, duly authorized in the premises, and General Motors has caused its corporate name to be hereunto subscribed by C. E. Wilson, its Vice President, and such signature to be attested by T. S. Merrill, its Secretary, duly authorized in the premises, and this agreement has been executed in the above manner in duplicate, all as of the first day of January 1931.

UNITED STATES RUBBER COMPANY,
By L. D. TOMPKINS, *Vice President*.

Attest:

ERIC BURKMAN,
Secretary.

GENERAL MOTORS CORPORATION,
By C. E. WILSON, *Vice President*.

Attest:

T. S. MERRILL,
Secretary.

O. K'd January 30, 1931, W. F. Armstrong.

R. E. Sheahan, January 22, 1931.

Approved as to form, Robert E. Day, and others, January 22, 1931.

Approved as to form: James M. Eig.

EXHIBIT B

Size and ply	Car	(Item A) Rubber weight per set	(Item B) Cotton weight per set	(Item C) Total price less rubber and cotton per set
4.75-19-4, no flap	Chevrolet	32 82	12 44	9.11
5.00-19-4, no flap	Pontiac	35 07	13 60	9.49
5.00-19-4	Pontiac	34 64	13 60	9.69
5.25-18-4, no flap	Oldsmobile	54 83	13 38	10.96
5.25-18-4	Buick	36 40	13 38	11.14
5.50-18-4, no flap	Oakland	38 55	14 30	12.12
5.50-18-4	Oakland	40 12	14 30	12.29
5.50-19-4	Buick	41 80	15.08	12.61
6.50-19-4	Buick	59 76	16 88	15.77
5.50-20-6	G. M. C.	51 28	21 51	14.98
6.00-18-6	Viking	58 40	22 10	15.41
6.00-20-6	G. M. C.	64.36	24 49	16.83
6.50-18-6	G. M. C.	64.36	23 94	16.76
6.50-19-6	Buick, LaSalle, Cadillac	67.44	25.23	17.22
6.50-20-6	G. M. C.	70.88	26 74	17.61
7.00-18-6	LaSalle, Cadillac, G. M. C.	74.80	27.15	18.80
7.00-18-6, W. S. W.	Cadillac	78 64	27 88	20 48
7.00-19-6	Cadillac	79 28	29 38	19 93
7.00-19-6, W. S. W.	Cadillac	85 40	29 38	21.67
7.50-18-6	Cadillac	99 36	28 66	24.64
7.50-18-6, W. S. W.	Cadillac	100 72	28 66	26.29
7.50-19-6	Cadillac	104 28	30 26	25.83
7.50-19-6, W. S. W.	Cadillac	104 60	30 26	27.55
5.50-20-6, H. S. B.	G. M. C.	60.44	24.78	18.34
6.00-20-6, H. S. B.	G. M. C.	67.84	25.61	19.56
6.50-20-6, H. S. B.	G. M. C.	78.56	25.27	24.86
7.00-20-8, H. S. B.	G. M. C.	101.48	38.70	31.55
7.50-20-8, H. S. B.	G. M. C.	166.76	49.28	54.64
8.25-20-10, H. S. B.	G. M. C.	205.08	64.80	71.67
9.00-20-10, H. S. B.	G. M. C.	245.56	72.02	82.34
9.75-20-12, H. S. B.	G. M. C.	303.44	100.09	105.92
10.50-20-12, H. S. B.	G. M. C.	327.52	107.72	117.23
30 x 5-6, H. S.	Chevrolet and G. M. C.	81.28	21.40	19.75
30 x 5-8, H. S.	G. M. C.	95.16	33.07	22.47
32 x 6-8, H. S.	Chevrolet and G. M. C.	111.68	34.66	30.41
32 x 6-10, H. S.	G. M. C.	153.80	46.74	50.41
36 x 6-10, H. S.	G. M. C.	176.80	55.72	55.69
34 x 7-10, H. S.	G. M. C.	203.64	59.06	65.39
38 x 7-10, H. S.	G. M. C.	222.80	66.42	72.58
38 x 8-12, H. S.	G. M. C.	265.32	79.66	94.03
38 x 9-14, H. S.	G. M. C.	353.88	117.65	137.72

Mr. HARRIS. The matter was kept quite confidential, and we have a letter here enclosing a check for \$1 million, which was to be delivered by the officer of United States Rubber to General Motors.

This is a letter, committee exhibit 47, which is addressed by Arthur Surkamp, the comptroller of United States Rubber, to Sheahan, their agent in Detroit, dated December 31, 1936:

DEAR MR. SHEAHAN: Herewith please find check to the order of General Motors Corp. for \$1 million in accordance with your conversation today with Mr. L. D. Tompkins.

L. D. Tompkins was the manager of the tire department.

Mr. McHUGH. Mr. Harris, did the car divisions under this plan actually pay United States Rubber in accordance with the amount of the billing to them?

Mr. HARRIS. Well, I do not know whether the divisions did, but I think the checks went to United States Rubber in accordance with the billings to the division, I suppose, through the comptroller's office in some fashion, and the difference between the two prices was in the form of a check, a refund or a rebate.

Mr. McHUGH. Was this rebate check sent to the various car divisions that were purchasing tires?

Mr. HARRIS. I do not think so. It would upset the whole thing, naturally.

Obviously, this check is given to the agent in Detroit of General Motors to deliver, apparently personally. The thing is marked "Confidential," I believe—"Personal and Confidential."

Senator O'MAHONEY. It is marked "Personal and Confidential." The photostat I have does not show any letterhead.

Mr. HARRIS. No, it does not, sir; it just shows "New York, N. Y."

Senator O'MAHONEY. It is signed Arthur Surkamp.

Mr. HARRIS. Who is the comptroller.

Senator O'MAHONEY. How do you know he was at that time comptroller of United States Rubber?

Mr. HARRIS. I can only speak from what I probably learned at the trial.

Senator O'MAHONEY. From your investigation?

Mr. HARRIS. And I do say that the officers here who are named on the letter as to getting copies are the president of United States Rubber Tire Co.; William De Krafft, was on the finance committee at the time; and Tompkins was the manager of the tire department.

Senator O'MAHONEY. So that the persons named here, including the addressee—

Mr. HARRIS. Yes.

Senator O'MAHONEY. Are all rubber officials?

Mr. HARRIS. Yes, sir.

Senator O'MAHONEY. Except Mr. Tompkins, I assume?

Mr. HARRIS. No, he is the manager of the tire department.

Senator O'MAHONEY. He is the manager of the tire department?

Mr. HARRIS. This is right within the company.

Senator O'MAHONEY. This is a company document?

Mr. HARRIS. That is right, sir.

Senator O'MAHONEY. Transmitting a \$1 million check—

Mr. HARRIS. That is right.

Senator O'MAHONEY. Payable to General Motors Corp.?

Mr. HARRIS. That is right.

Senator O'MAHONEY. Transmitting it to Mr. Sheahan——

Mr. HARRIS. That is right.

Senator O'MAHONEY (continuing). Of the Detroit plant of United States Rubber?

Mr. HARRIS. That is right, sir.

Senator O'MAHONEY. And there are no instructions here?

Mr. HARRIS. In accordance with the conversation.

Senator O'MAHONEY. Except that reference to the conversation.

Mr. HARRIS. That is right, sir.

(The document referred to follows:)

GOVT. TRIAL EX. No. 1168

NEW YORK, N. Y., December 31, 1936.

Personal and Confidential.

Mr. R. E. SHEAHAN,
U. S. Rubber Products, Inc.,
Detroit Plant, Detroit, Michigan.

DEAR MR. SHEAHAN: Herewith please find check to the order of General Motors Corporation for \$1,000,000 in accordance with your conversation today with Mr. L. D. Tompkins.

Very truly yours,

ARTHUR SURKAMP, *Comptroller*.

cc: Messrs. F. B. Davis, Jr., Wm. de Kraft, L. D. Tompkins.

NOTE.—"7 1080" is stamped in the lower right corner of the original.

Mr. McHUGH. Mr. Harris, who negotiated the rubber contract on behalf of the General Motors Corp.?

Mr. HARRIS. Charles E. Wilson and F. B. Davis.

Then, shortly after that, if I might go on, a discount plan was drawn up May 22, 1933.

We have a letter to General Motors from Tompkins, the manager of the tire department, giving special discounts and guaranteeing "in consideration from the guarantee of a substantial volume of business"—and these discounts are very——

Mr. McHUGH. What committee number is that?

Mr. HARRIS. That is committee exhibit 44, and Government exhibit 1140, and you will see——

Mr. McHUGH. Will you please read the amounts of those discounts?

Mr. HARRIS. Yes. \$5 million is \$250,000; \$6 million is \$365,000; \$7 million is \$480,000; \$8 million is \$595,000; \$9 million is \$710,000; \$10 million is \$825,000; \$11 million is \$940,000; \$12 million is \$1,050,000; \$13 million is \$1,200,000; 14 million is \$1,350,000; and \$15 million and up is \$1,500,000 and up to 10 percent.

Mr. McHUGH. That would mean on purchases by General Motors totaling \$14 million it would receive a discount or rebate in the amount of \$1,350,000?

Mr. HARRIS. That is right.

(The document referred to is as follows:)

GOVT. TRIAL EX. No. 1140

(Letterhead of United States Rubber Products, Detroit, Mich.)

TIRE DEPARTMENT, May 22, 1933.

GENERAL MOTORS CORPORATION,
General Motors Building, Detroit, Michigan.
(Attention: Mr. C. E. Wilson.)

GENTLEMEN: In consideration of the guarantee of a substantial volume of business over a period of years resulting from an agreed fixed minimum per cent of General Motors requirements for tires as original equipment and spares, as per contract dated May 22, 1933, and such other rubber goods, exclusive of raw materials, as the Rubber Company may be able to supply to General Motors, the Rubber Company agrees to give General Motors the following discounts on annual collections, exclusive of taxes, by the Rubber Company from General Motors and subsidiaries and/or affiliated companies for all rubber products supplied to them by the Rubber Company. Settlements shall be made quarterly, or as otherwise agreed.

\$5,000,000 -----	\$250, 000
\$6,000,000 -----	365, 000
\$7,000,000 -----	480, 000
\$8,000,000 -----	595, 000
\$9,000,000 -----	710, 000
\$10,000,000 -----	825, 000
\$11,000,000 -----	940, 000
\$12,000,000 -----	1, 050, 000
\$13,000,000 -----	1, 200, 000
\$14,000,000 -----	1, 350, 000
\$15,000,000 and up -----	1, 500, 000 and up 10%

It is further understood that whereas agreement dated May 22, 1933, specifies under Paragraph 3 that the Rubber Company will not be required to supply, and may refuse to supply, any tires at prices below its cost of producing said tires, the said stipulation shall be interpreted, nevertheless, to mean that the Rubber Company will not be required to supply, and may refuse to supply, tires to General Motors at prices which may be below the said cost, *plus ten per cent (10%) of the said cost*. The said prices which are not to be below cost plus ten per cent (10%) thereof are prices arrived at before the above enumerated discounts.

Very truly yours,

/S/ L. D. TOMPKINS.

Mr. HARRIS. Then that was changed again, apparently changed the same time; I think there was considerable confusion over that thing.

These two documents both have the same date, but you have another discount table which shows pretty much the same thing, which is committee exhibit No. 45, Government's exhibit No. 1141, and it works out the discounts.

(The document referred to is as follows:)

GOVT. TRIAL EX. No. 1141

(Letterhead of United States Rubber Products, New York)

MAY 22, 1933.

GENERAL MOTORS CORPORATION,
Detroit, Mich.

GENTLEMEN: Our signatures below indicate our mutual agreement to the following:

In consideration of the guarantee of a substantial volume of business through a period of years resulting from an agreed fixed minimum percentage of General Motors and its subsidiary and affiliated companies' requirements of tires as

original equipment and spares as per contract dated May 22, 1933, and such other rubber goods, exclusive of raw material, as the Rubber Company may be able to supply to General Motors and its subsidiary and affiliated companies, the Rubber Company agrees to give General Motors the following discounts on annual collections, exclusive of taxes, by the Rubber Company from General Motors and its subsidiary and affiliated companies for rubber products supplied to them by the Rubber Company. Settlement shall be made annually.

\$10,000,000-----	\$825,000
\$11,000,000-----	940,000
\$12,000,000-----	1,050,000
\$13,000,000-----	1,200,000
\$14,000,000-----	1,350,000
\$15,000,000 and up-----	1,500,000 and up 10 percent

It is further understood that whereas the agreement dated May 22, 1933, specifies in clause 3 that the Rubber Company will not be required to supply tires at prices below its cost, the said stipulation shall be interpreted to mean that the Rubber Company will not be required to supply tires at prices which, after the discount provided above, or a portion thereof, result in selling below cost. The intention is to assure the Rubber Company, out of its aggregate price for tires sold under the contract, at least its cost. This intention is explained by the following examples:

A

(1) Assumed net billing price for the year, excluding excise and processing tax-----	\$16,000,000
(2) Resulting discount, per tabulation above-----	10 percent
(3) Assumed cost-----	\$14,000,000
(4) Resulting dollar value of 10 percent discount-----	1,600,000
(5) Assumed net billing price, less resulting discount-----	14,400,000

(Since this last figure is above assumed cost, the full 10 percent would be allowed.)

B

(1) Assumed net billing price for the year, excluding excise and processing tax-----	\$16,000,000
(2) Resulting discount, per tabulation above-----	10 percent
(3) Assumed cost-----	\$15,000,000
(4) Resulting dollar value of 10 percent discount-----	1,600,000
(5) Assumed net billing price, less resulting discount-----	14,400,000

(Since this last figure is below assumed cost, the full 10 percent would not be allowed, but only the difference between (1) and (3), or \$1,000,000, which is 6.25 percent, would be allowed.)

UNITED STATES RUBBER COMPANY,
By /S/ L. D. TOMPKINS, *Vice President*.

Attest:

/S/ ERIC BURKMAN,
Secretary.

GENERAL MOTORS CORPORATION,
By /S/ C. E. WILSON, *Vice President*.

Attest:

/S/ T. S. MERRILL,
Secretary.

Mr. McHUGH. Mr. Harris, what was the reason for the fact of this rebate not being made known to the various car divisions which are actually purchasing the tires?

Mr. HARRIS. Well, I do not know that any reason was stated. I could give an opinion that the participants did not want it generally known, did not want it known, perhaps, to other tire companies what prices they were making. I think that probably was brought out; I think we questioned on that.

Mr. McHUGH. It was stated—

Mr. HARRIS. It was stated, I might say, by Mr. Wilson that because of the price, favorable price, that General Motors got from United States Rubber, it got a more favorable price from a competitor of United States Rubber for the Chevrolet, for instance.

Mr. McHUGH. By that are you saying that as a result of these arrangements which General Motors had with United States Rubber, it was successful in causing other tire manufacturers to lower their prices to General Motors?

Mr. HARRIS. I think Mr. Wilson so stated.

I might say briefly that these contracts were in effect, as appears from committee exhibit 54—you first had your contract in 1931 on the ABC formula; in 1932 and 1933 you had the same formula, that is, the rubber and cotton; 1934, 1935 and January through July of 1936 you had a price which should be the lowest competitive level, less the annual volume discount, with a provision, however, that United States Rubber would not have to sell for less than cost plus 10 percent; from August, 1936 to January 31, 1942 you have that same arrangement.

During the war I doubt whether there were contracts; I do not recall now.

In 1946, 1947, and 1948 you had firm orders, not contracts, and the last contract we have is the 1949 contract, and that was for 64 percent for most divisions.

Mr. McHUGH. What was the last year?

Mr. HARRIS. That is 1949. That is committee exhibit 48.

(The document referred to is as follows:)

GOVT. TRIAL EX. No. 1198

[Letterhead of General Motors Corporation, Office of the Secretary]

File No. 14362.

BETWEEN U. S. RUBBER COMPANY AND GMC

Subject: Contract dated 3-1-49 covering tires and tubes:

Date:

Term:

Time for Performance:

Amount:

Method of Payment:

Opinions Notices and Remarks:

Received from: Purchasing.

Execution Approved by Legal Department:

Secretary By jm.

Recorded: 4-29-49.

Secretary By _____.

Indexed:

Treasurer By _____.

Secretary By _____.

[Letterhead of General Motors Corporation, General Motors Building,
3044 West Grand Boulevard, Detroit 2, Michigan]

MARCH 1, 1949.

UNITED STATES RUBBER COMPANY,
6600 East Jefferson Avenue, Detroit 7, Michigan.
(Attention: Mr. Walter D. Baldwin.)

GENTLEMEN: Confirming our discussion, we beg to advise that we will purchase from your company for the period from March 1 to August 31, 1949, at the prices set forth in Schedule A attached hereto and subject to the terms and con-

ditions of purchase set forth in Schedule B attached hereto, the following requirements of tires and tubes for original equipment for motor vehicles manufactured by the following Divisions of General Motors Corporation during the aforesaid period of time:

	<i>Percent of Requirements</i>
Buick Motor Division.....	64
Oldsmobile Division.....	64
Pontiac Motor Division.....	64
Cadillac Motor Car Division.....	64
Chevrolet Motor Division:	
Passenger car sizes.....	50
Truck sizes.....	55
GMC Truck and Coach Division:	
Passenger car sizes.....	64
Truck and coach sizes.....	55

SCHEDULE A—TO LETTER AGREEMENT DATED 3-1-1949 BETWEEN U. S. RUBBER COMPANY AND GENERAL MOTORS CORPORATION

<i>Size</i>	<i>Price</i>	<i>Size</i>	<i>Price</i>
Passenger-High Pressure:		Truck and Bus:	
600-16-6 Black.....	9.22	Fl. 15-6.....	12.34
600-18-6 Black.....	12.50	Fl. 15-8.....	14.40
650-16-6 Black.....	10.25	650-20-6.....	14.43
750-16-6 Black.....	14.26	650-20-8.....	17.05
750-16-6 White.....	16.39	700-16-6.....	13.32
Passenger-Low Pressure:		700-17-6.....	15.11
670-15-4 Black.....	7.64	700-17-8.....	18.02
670-15-4 White.....	8.78	700-18-8.....	18.85
670-15-6 Black.....	9.66	700-20-8.....	18.89
670-15-6 White.....	11.11	700-20-10.....	23.79
710-15-4 Black.....	8.07	750-16-6.....	15.75
710-15-4 White.....	9.28	750-16-8.....	17.39
710-15-6 Black.....	10.28	750-17-8.....	18.66
710-15-6 White.....	11.82	750-20-8.....	21.66
760-15-4 Black.....	8.64	750-20-10.....	29.02
760-15-4 White.....	9.94	825-16-10.....	28.53
760-15-6 Black.....	11.65	825-20-10.....	32.64
760-15-6 White.....	13.40	825-20-12.....	36.59
800-15-4 Black.....	9.50	900-20-10.....	38.19
800-15-4 White.....	10.91	1000-20-12.....	49.99
820-15-4 Black.....	9.80	1000-22-12.....	53.05
820-15-4 White.....	11.27	1100-20-12.....	56.06
820-15-6 Black.....	12.37	1100-22-12.....	59.04
820-15-6 White.....	14.23	1100-24-12.....	63.50
890-15-6 Black.....	15.25	1200-20-14.....	76.02
890-15-6 White.....	17.55	1200-24-14.....	89.33

Prices shown above include casing and tube and flap where required.

Prices shown above do not include Federal Excise Tax.

Prices shown above are net F. O. B. point of shipment; freight prepaid and charged on the basis of F. O. B. point of shipment or on basis of equalizing to carload rate from the nearest competitive manufacturing shipping point, whichever is lower.

This Schedule A may be modified in writing from time to time to include additional tire sizes, types, and/or brands at prices to be agreed upon by the parties hereto.

SCHEDULE B

To Letter Agreement between General Motors Corporation (hereinafter called "Buyer") and United States Rubber Company (hereinafter called "Seller") dated March 1, 1949

TERMS AND CONDITIONS OF PURCHASE

1. Terms: Payment terms are net 25th prox.
2. Freight: All deliveries are f. o. b. point of shipment; freight prepaid and charged on basis of f. o. b. point of shipment or on basis of equalizing to carload

rate from the nearest competitive manufacturing shipping point, whichever is lower.

3. **Billing Instructions:** Seller agrees that bills of lading or other shipping receipts, packing slips, invoices, etc., will be handled by Seller in accordance with instructions issued by the Buyer.

4. **Schedules:** Deliveries shall be made as specified by the Buick, Oldsmobile, Pontiac, Cadillac Motor Car and/or GMC Truck & Coach Divisions of Buyer on such Divisions' regular purchase orders and shipment releases, without charge for boxing, crating, cartage, or storage, suitably packed to secure lowest transportation cost and in accordance with the requirements of common carriers. Buyer will have no liability for payment for material or items delivered to Buyer which are in excess of quantities specified in the delivery schedules. Buyer may, from time to time, change delivery schedules or direct temporary suspension of scheduled shipments.

5. **Contract: Michigan Contract and Non-Assignment:** This contract is to be construed according to the laws of the State of Michigan, and is nonassignable by the Seller.

6. **Excusable Delays:** Seller shall not be liable for delays or defaults in deliveries due to causes beyond its control and without its fault or negligence. If at any time Seller has reason to believe that deliveries will not be made as scheduled, written notice setting forth the cause of the anticipated delay will be given immediately to Buyer.

7. **Warranty:** Seller expressly warrants that all the material and work covered by this order will conform to the specification, drawings, samples, or other description furnished or specified by Buyer, and will be merchantable, of good material and workmanship and free from defect. Seller expressly warrants that all the material covered by this order which is the product of Seller or is in accordance with Seller's specifications, will be fit and sufficient for the purposes intended.

8. **Cancellation:** Buyer reserves the right to cancel all or any part of the undelivered portion of this order if Seller does not make deliveries as specified in the schedules, or if Seller breaches any of the terms hereof, including the warranties of Seller.

9. **Inspection:** All material shall be received subject to Buyer's inspection and rejection. Defective material or material not in accordance with Buyer's specifications will be held for Seller's instruction and at Seller's risk and if Seller so directs, will be returned at Seller's expense. No goods returned as defective shall be replaced without a new order. Payment for material on this order prior to inspection shall not constitute an acceptance thereof.

10. **Change in Specifications:** Buyer reserves the right at any time to make changes in drawings and specifications as to any material and/or work covered by this order. Any difference in price or time for performance resulting from such changes shall be equitably adjusted and the contract shall be modified in writing accordingly.

11. **Materials Furnished by Buyer:** Any material furnished by Buyer, on other than a charge basis in connection with this order, shall be deemed as held by Seller upon consignment. All such materials not used in the manufacture of the products covered by this purchase order shall, as directed, be returned to Buyer at Buyer's expense. All such materials not so accounted for or so returned shall be paid for by Seller.

12. **Remedies:** The remedies herein reserved shall be cumulative, and additional to any other or further remedies provided in law or equity. No waiver of a breach of any provision of this contract shall constitute a waiver of any other breach, or of such provision.

13. **Patents:** By accepting this order, seller guarantees that the material hereby ordered and the sale or use of it will not infringe any United States or foreign letters patent, and seller agrees to defend, protect and save harmless buyer, its successors, assigns, customers, and users of its products, against all suits at law or in equity, and from all damages, claims and demands, for actual or alleged infringement of any patent by reason of the sale or use of the material hereby ordered.

14. **Advertising:** Seller shall not, without first obtaining the written consent of buyer, in any manner, advertise or publish the fact that seller has contracted to furnish buyer the material herein ordered, and for failure to observe this provision, buyer shall have the right to terminate the contract resulting from the acceptance of this order without any obligation to accept deliveries after the date of termination or make further payments except for completed articles delivered prior to termination.

15. Insolvency: Buyer may forthwith cancel the contract resulting from the acceptance of this order in the event of the happening of any of the following: Insolvency of the Seller; the filing of a voluntary petition in bankruptcy; the filing of any involuntary petition to have Seller declared bankrupt provided it is not vacated within thirty (30) days from the date of filing; the appointment of a Receiver or Trustee for Seller provided such appointment is not vacated within thirty (30) days from the date of such appointment, the execution by Seller of an assignment for the benefit of creditors.

Mr. McHUGH. What was the last year, Mr. Harris, during which rebates were granted by United States Rubber to General Motors?

Mr. HARRIS. Well, these terms, lowest competitive level, less annual volume discount, you see, you have come away from the formula price in rubber and cotton that was left behind in 1934; you have now come to a price which is at the lowest competitive level, and it is a pure discount, not a rebate, because you are using the price that was made, I think, by the four principal tire manufacturers, and United States Rubber was required to meet that, and then to give discounts after that. Whether that was secret, I do not know.

Mr. McHUGH. So that these are discounts—

Mr. HARRIS. They are discounts.

Mr. McHUGH (continuing). Over the lowest competitive price.

Mr. HARRIS. That is right, sir; with the proviso that United States Rubber does not have to sell at cost plus 10 percent lower than value.

Mr. McHUGH. Would that indicate, Mr. Harris, that the General Motors Corp. was obtaining tires at prices lower than other car manufacturers were paying for tires?

Mr. HARRIS. I do not know what deals they were making; they may have made deals, too. They were obtaining a discount, they were obtaining a discount from the lowest competitive price; whether other companies got the same sort of thing, I cannot tell you.

Mr. McHUGH. Mr. Harris, what was the highest percentage of General Motors' requirements that United States Rubber ever furnished under these contracts?

Mr. HARRIS. Apparently from this chart, which is committee exhibit 54, it does not look as though there was very much difference. It seemed to run 60 to 70 percent, I see by my figures here.

For instance, in 1931 Cadillac-La Salle gives 15 percent of its requirements, whereas in 1934 it gives 20 percent of its requirements. But another company that was giving 50 percent of its requirements gives 30 percent of its requirements. I figured it out on the chart; it is about 60 to 70 percent of their entire requirements.

Did you wish to go into—

Mr. McHUGH. Mr. Harris, did you ever discover any evidence in your investigation that the Du Pont Co. required its divisions or employees to purchase their automotive requirements from the General Motors?

Mr. HARRIS. A series of documents—

Senator O'MAHONEY. May I interrupt at this point? Before you go to that, Mr. McHugh, I want to return for a moment to the consideration of document No. 4. This was the history of the Du Pont Co.'s investment in General Motors Corp. beginning in the year 1917 and proceeding through succeeding years, ending in 1921.

On page 8 of that document when you were describing one of the intercompany transactions on page 7, the recitation was made:

Under date of May 5 authorization was given to exchange all of our shares of General Motors common stock at the rate of 1 for 10 for the no-par value stock of that corporation, as provided for in the amendments to their certificates of incorporation.

Then on the next page:

Under date of June 9 we sold 125,000 shares of no-par value General Motors stock to J. P. Morgan & Company at \$20 per share.

The Library of Congress which we asked to check upon the market price—I raised the question with you at the time——

Mr. HARRIS. Yes.

Senator O'MAHONEY (continuing). Has reported to me that on June 9, 1920, the General Motors stock market price was bid \$26 per share, asked \$26 $\frac{1}{4}$ ——

Mr. HARRIS. Mr. Morgan was getting something.

Senator O'MAHONEY (continuing). Closing \$26.

Mr. HARRIS. Very interesting, Senator.

Senator O'MAHONEY. The next item concerning which I made inquiry at the time was the sale of the stock to Mr. Durant.

Mr. HARRIS. Oh, yes.

Senator O'MAHONEY. The paragraph read:

Under date of November 1920——

we are dealing, of course, with the year 1920——

Mr. HARRIS. That is right.

Senator O'MAHONEY (reading):

It became necessary to relieve Mr. W. C. Durant of approximately 2,600,000 shares of no-par value General Motors stock at \$9.50 per share. To finance this transaction the Du Pont Securities Co. was incorporated. This new company was authorized to issue 20 million 1-year 8-percent collateral notes——

and so forth.

So when they were offering to buy Mr. Durant's stock of approximately 2,600,000 shares at \$9.50 a share on November 19, the stock market price that day was bid \$13, asked \$13.50, closing \$13 $\frac{1}{8}$.

Mr. HARRIS. Very interesting, sir; that is something we did not learn.

Senator O'MAHONEY. The committee will stand in recess until 2 o'clock.

(Whereupon, at 1 p. m., the subcommittee recessed to reconvene at 2 p. m., of the same day.)

AFTERNOON SESSION

Senator O'MAHONEY. Let us proceed, Mr. McHugh.

Mr. McHUGH. Mr. Harris, did the Du Pont and General Motors corporations ever engage in any type of joint activities in the development of any chemical products?

STATEMENT OF EWART HARRIS—Resumed

Mr. HARRIS. Yes; they engaged in the development of tetraethyl lead; at least the manufacturing was done by Du Pont. The development in the first instance was done by General Motors. There was also some by Standard Oil.

Tetraethyl lead, as you may know, is an antiknock compound. General Motors had been looking for that sort of thing for quite a while, and around 1920 they came up with a formula which used bromine. Bromine at the time was in very scarce supply. However, a contract was given to Du Pont to proceed with manufacture under the bromine patents. It did so.

About the same time, a little later, Standard Oil developed a process using chloride. Chloride was very much cheaper, very much more plentiful, and was obviously the method that should be used. However, Standard Oil wanted to manufacture as well as distribute. Du Pont Co. did not want Standard Oil to manufacture, didn't want anybody to manufacture but itself.

Sloan of General Motors, the owners of one set of patents, became a sort of mediator between Du Pont and Standard Oil on the manufacturing question, and on June 27, 1924, exhibit 55, Mr. Sloan wrote to Mr. Irénée du Pont stating that he had given the thing a lot of thought, he was most happy and entirely satisfied—

to leave the matter entirely in your hands and the only thought that I have given in any other direction is simply to give due consideration to the psychological side and the opinion of our partners, the Standard Oil Co. of New Jersey, in the enterprise.

Then he goes on suggesting that—

we—

meaning the Du Pont Co.—

should immediately lay down a 1,000-gallon-a-day tetraethyl lead plan under your supervision at deep water, and make some sort of a deal concerning which I wrote you.

The other suggestion that Mr. Sloan made was that—

for psychological reasons—

reading from the second page—

we should permit the Standard Oil Co.—

Senator O'MAHONEY. Pardon me. You stopped reading that very interesting sentence in the middle:

and make some sort of a deal concerning which I wrote you yesterday that is satisfactory to all parties—and there will be no difficulty as to this—which will serve to protect the capital you put into the enterprise and give you a reasonable return on the capital employed.

Mr. HARRIS. Mr. Sloan was looking after the Du Pont interest, apparently.

We should then give thought to the development of an additional plant, in my judgment located elsewhere but under your supervision, for something like 500 gallons. Perhaps by the time we get into it we might think it desirable to make it 1,000 gallons.

For psychological reasons we should permit the Standard Oil Co. of N. J. to expend \$35,000 or \$40,000 of their own money to experiment with the 100-gallon-a-day outfit in one of their plants, I believe in Bayway, in a building which they could use temporarily for the purpose. This will serve to satisfy them from the psychological standpoint and it is certain that it will be impossible to operate such an experimental plant successfully when the larger units are running, but it will give them a means to work out their viewpoint which certainly can do us no damage when we approach it from the bigger way.

Any further thought of developing any real production other than under the auspices of the Du Pont Co. will be deferred until some later time.

This is Mr. Sloan of General Motors writing.

Mr. McHUGH. Mr. Harris, were there patents acquired by anyone in connection with the tetraethyl lead?

Mr. HARRIS. Yes; there were patents on both processes, I believe, on the bromine and on the chloride. I might say that this Bayway plant had a very tragic sequel. The plant started operating under Standard Oil Co., and a number of lead poisoning cases developed, and it became widely publicized and developed almost a national scandal so that the Surgeon General of the United States intervened, and all manufacture of tetraethyl lead was stopped. It was stopped for about 11 months or more, and when it was resumed there was no Standard Oil manufacturing tetraethyl lead, it was only Du Pont. And that continued during the life of the patents.

Questions arose between the Du Pont Co. and Standard Oil as to price, and again Mr. Sloan came to the front. He said in a letter, committee exhibit 57, Government exhibit 704, February 8, 1926:

I am not now in harmony, and never have been, with the discussion with your company—

that would be the Standard Oil or Ethyl—

regarding the cost of tetraethyl lead. So far as I am concerned, if you tell us what it should be, I would be satisfied to accept it as being a proper and constructive price based upon a fair cost of manufacture with a reasonable allowance for all the hazards that we are going into and I am perfectly satisfied to base our commercial program on such price as you might name knowing that it is to your interest as well as ours to get the price down as low as is consistent. On the other hand, you must recognize that I am essentially, or at least believe and hope I am, a member of the Du Pont family and having, rightly or wrongly, formed this association with our friends the Standard Oil Co. of New Jersey and they knowing my position, it places me in a very embarrassing situation.

And finally he said as to price, on the second page, that he has been discussing the matter with Standard Oil and he thinks that Du Pont is undoubtedly right.

Mr. McHUGH. Mr. Harris, is the Ethyl Corp. merely to be a distributor of tetraethyl lead?

Mr. HARRIS. Yes. It was to sell tetraethyl lead. The manufacture was to be done by Du Pont under a contract with the Ethyl Corp. The Ethyl Corp. was formed 50 percent each to Standard Oil and to General Motors, and they were the operating company and Du Pont manufactured under license from tetraethyl lead during the entire lifetime of the patent.

Mr. McHUGH. Under what circumstances, Mr. Harris, did Standard Oil come into this picture?

Mr. HARRIS. By the discovery of the chloride process. They had their own research going on and their chloride process was far more commercially available and far more commercially valuable than the bromine process.

Mr. McHUGH. Were there patent conflicts between Standard Oil Co. and General Motors?

Mr. HARRIS. Oh, no, apparently not, because it looks like very early in the game the Du Pont and General Motors interests were very glad to take over the chloride process. The chloride process became the principal process.

Mr. McHUGH. And then after Du Pont took over the manufacture under these patents, the Standard Oil Co. did no manufacturing of tetraethyl lead?

Mr. HARRIS. No, not after Bayway. Then the life of the patents, of course, eventually expired.

In view of the actual expiration of the patent, a contract was drawn up that each party, meaning the Du Pont Co. and the Ethyl Co., should give to the other all the know-how of each party, so that at the end of the patent period Ethyl would be able to manufacture as well as Du Pont.

Mr. McHUGH. Approximately when would these patents expire?

Mr. HARRIS. 1947, I think, was the time. You see, it would be about a 14- or 16-year period.

What happened at the end of the patent period was that Du Pont had built a plant which it turned over to Ethyl which had about two-thirds of the total capacity for the manufacture of tetraethyl lead and Du Pont had a plant which turned out about one-third of the capacity, and at the end of the patent period the entire capacity was being turned out by these two plants.

The customers of Ethyl, of course, were the oil companies, and when the division came, Du Pont took its share of Ethyl customers.

The fact was, of course, that these plants did no more than supply the demand. It wasn't a case of any real competition, it was just two plants that were available to supply a tremendous demand for the compound. It was stated that there was no price competition between them.

Mr. McHUGH. Did any other companies ever go into the manufacture of tetraethyl lead after the expiration of these patents?

Mr. HARRIS. None that was brought out. Whether they have since, I don't know.

(Committee exhibits Nos. 55 and 57 are as follows:)

(Government Exhibit 661. In the District Court of the United States, Northern District of Illinois, Eastern Division. Before La Buy, J. Harry A. Harnden, Official Court Reporter)

GENERAL MOTORS CORPORATION,
New York City, June 27, 1924.

Mr. IRÉNÉE DU PONT,
President, E. I. du Pont de Nemours & Company,
Wilmington, Delaware.

MY DEAR IRÉNÉE: I have your letter of June 26th confirming our telephone conversation.

As I told you over the telephone, I have given this thing a lot of thought and I would be most happy and entirely satisfied to leave the matter entirely in your hands and the only thought that I have given in any other direction is simply to give due consideration to the psychological side and the opinion of our partners, the Standard Oil Company of N. J. in the enterprise. Naturally, they have their viewpoint. They are contributing in a large way to the commercial side of the tetra-ethyl lead development and for that reason I am bound to listen to what they have to say.

I feel, therefore, that what we ought to do is substantially as follows and I wrote you somewhat along these lines yesterday.

1. We should immediately lay down a 1,000 gallon a day tetra-ethyl lead plant under your supervision at deep water, and make some sort of a deal concerning which I wrote you yesterday that is satisfactory to all parties—and there will be no difficulty as to this—which will serve to protect the capital you put into the enterprise and give you a reasonable return on the capital employed.

2. We should then give thought to the development of an additional plant in my judgment located elsewhere but under your supervision, for something like 500 gallons. Perhaps by the time we get into it we might think it desirable to make it 1,000 gallons.

3. For psychological reasons we should permit the Standard Oil Company of N. J. to expend \$35,000 or \$40,000 of their own money to experiment with the 100 gallon a day outfit in one of their plants, I believe in Bayway, in a building which they could use temporarily for the purpose. This will serve to satisfy them from the psychological standpoint and it is certain that it will be impossible to operate such an experimental plant successfully when the larger units are running, but it will give them a means to work out their viewpoint which certainly can do us no damage when we approach it from the bigger way.

4. Any further thought of developing any real production other than under the auspices of the du Pont Company will be deferred until some later time.

I really feel that the weight of the argument in favor of a geographical separation of units is absolutely essential because you must not fail to appreciate, assuming that no other antiknock material is developed in the meantime and that we have the field to ourselves that in the event of universal distribution which ought to come fairly promptly with the advent of the high compression engine, a contingency would arise whereby the whole automotive industry would be dependent upon tetra-ethyl lead, and irrespective of what any individual opinion might be as to the propriety of putting all our eggs in one basket, I feel sure that none of us would want to carry such a hazard because it is not inconceivable that a fire, a strike or some other catastrophe that could not be forecast might put the plant out of business for even a short time and if the supply at that time is not enough to carry over the interval, every motor car in the United States would be out of business. All this, of course, is full of assumptions, nevertheless, if we are successful in what we are attempting to do it is a contingency that we must recognize.

So far as I am concerned I am absolutely confident that with the experimental work behind us and a suitable cost established and a routine definitely established as well, that there is no reason at all why you should not be able to make a lower price than anyone else and at the same time make a larger return on the capital employed. Mr. Howard feels that way, too.

Will you kindly advise me if this entirely satisfactory, at least for a temporary argument.

Very truly yours,

(S) ALFRED P. SLOAN, Jr.

APAJr./K.

NOTE.—At lower right of both pages is written "GMC 1622A"; at upper right of first page is written "Or. Chem. Depts. General File" beneath which appears an illegible initial.

(Government Exhibit 704. In the District Court of the United States, Northern District of Illinois, Eastern Division. Before La Buy, J. Harry A. Harnden, (Official Court Reporter)

FEBRUARY 8, 1926.

Mr. IRÉNÉE DU PONT,

President, E. I. duPont deNemours & Company,

Wilmington, Delaware.

MY DEAR IRÉNÉE: I have your very kind letter of February 5th dealing with certain phases of the Ethyl Gasoline situation.

I have felt for some time that you were, in a way, out of harmony with the way things were developing and I do not know as I blame you. There are many things which I am out of harmony with myself. Your letter gives me an opportunity to express my opinion confidentially on various things which I will do in a letter because it is so hard to get an opportunity to sit down and discuss them personally.

First: I am not now in harmony, and never have been, with the discussion with your company regarding the cost of tetra ethyl lead. So far as I am concerned, if you tell us what it should be I would be satisfied to accept it as being a proper and constructive price based upon a fair cost of manufacture with a reasonable allowance for all the hazards that we are going into and I am perfectly satisfied to base our commercial programs on such price as you might name, knowing that it is to your interest as well as ours to get the price down as low as is consistent. On the other hand, you must recognize that I am essentially, or at least believe and hope I am, a member of the duPont family and having, rightly or wrongly, formed this association with our friends the Standard Oil Company of N. J. and they knowing my position, it places me in a very

embarrassing situation and I have felt, therefore, that I could help more in an indirect way by keeping my mouth shut. I was never in favor of the Standard Oil Company of N. J. going into the manufacture of tetra ethyl lead, but I felt that they never would get it out of their system unless they did go into it and when they established their record I felt that they would look at it differently than they had before, but apparently they do not seem to yet entirely appreciate all the facts in the case. However, I am sure that this will work itself out although it is a little disagreeable in the meantime.

Second: With all due respect to your judgment, I frankly and honestly do differ with you on the question of the hazard. I did feel and still feel that it was the right thing to withdraw from the market and I presume you still think that it was the wrong thing to do. If our responsibility was to be limited to Ethyl Gasoline Corporation, it would be one thing, but in the case of General Motors we must maintain the good-will of the public for the sake of our car products and in view of the position we were placed in by attacks which we did not have the ammunition to meet, I felt that in deference to public opinion and to our own position, we should retire until we knew more conclusively where we were at. Now we come to the point where we can go ahead and the same consideration actuates me. I think that we should confine the handling of the concentrated material in as few places as possible. I do not think we should go so far as to confine it to the refineries. As a matter of fact, I know in a practical way we will not do that. I do think, however, that we should eliminate the small pumps at the service station and the larger pumps on the tank wagon and that if it is worth going into at all it is worth going into so that we eliminate those particular hazards at least and I am sure that all our customers will agree with us on this and that we can go ahead on that basis altho perhaps not quite so fast. I agree with you that with organization you can do anything, at the same time the expense and the practical workout must be considered and, frankly, I should hate very much, if we can work it out any other way, to go back to a tank wagon mixing proposition. If our customers will not do it any other way and it is either that or nothing, then let us consider the hazard of that and decide our situation, but in the meantime if we can go ahead in a better way even in the face of a little delay, isn't that the better procedure?

Third: Regarding price. I have been discussing this matter with the Standard Oil people and I think you are undoubtedly right. As a matter of fact, the price was set two or three years ago when we first started and has been carried at cost and nobody has raised the question. Now all these questions come up and I see no reason why we should specify the price and I think that that position will prevail.

Fourth: When it comes to standardization, we should consider that matter further and I am sure it will be considered. Recognizing that any use of tetra ethyl lead must mean that the gasoline is ethylized gasoline irrespective of amount, if we sell tetra ethyl lead without any standard it would seem to me that a user purchasing the material would get a varying degree of satisfaction from nothing up to very complete satisfaction, depending upon how much tetra ethyl lead was used and, therefore, the term ethylized gasoline would not mean very much and would sooner or later become discredited. It may be that that would not happen, but certainly if we have no prescribed standards in other things of manufacture it usually results in deterioration of the products. On this point it occurred to me that we might adopt a standard for anti-knock and maintain that standard and then we might sell tetra ethyl lead at a lower standard and not call it ethylized gasoline, but the weakness of this is that I imagine the position would be taken that the use of any amount of tetra ethyl lead would have to carry the precautions incident to the full quantity, at least to a degree, and it would be hard to distinguish one from the other. Frankly, I do not exactly see how we can get anywhere unless we do adopt a standard, making that standard what commercially seems to be the best. However, that also will be considered more fully.

Fifth: I have had so much experience in the past few years in co-ordinating components which were more or less in conflict and which were rather indefinite at the best, that altho I felt rather discouraged at the end of our meeting the other day, nevertheless it was no different than a good many other meetings I have attended. I feel that there is a much better way to handle the property than the way it was handled the other day and I suggested to Mr. Webb that we ask the Standard Oil Company to appoint a man and that we will appoint a man to act as an Executive Committee and see if we can not formulate more

thoroughly our programs so that those points that have to go to the Board can be taken up after the principles have been more carefully worked out and a consensus of opinion developed before the meeting, both for the sake of conserving time and getting a more definite result.

To sum up the situation, I should be very much disappointed if you decide to withdraw from the picture at this time. I think that by working together a little more closely we can iron out many of these difficulties. I do not think it is the desire of any party to the picture to be arbitrary or to want to go one way as against another. I feel that there is nothing that is desirable for Ethyl Gasoline Corporation but what can be adopted and I have always found, outside of the relations with you, which I frankly think have been somewhat unreasonably handled, the attitude of our friends the Standard Oil Company to be helpful and constructive and we have always been able to do what we wanted to do if we were sure enough of our position to take a strong position.

Very truly yours,

SLOAN.

APSJr./K.

NOTE.—In right margin above text of letter appears a routing stamp containing initials "A. P. S.," "J. L. P.," "H. M. C.," "F. C. H.," "A. K. H.," "L. R. B.," "A. T. B.," "W. F. A."; check marks appear opposite the initials "A. P. S." and "A. T. B."; check mark and underlining are by hand; italics indicate handwriting.

Mr. HARRIS. We had a document which was marked "Government Trial Exhibit 834." It doesn't show a reporter's figure on it, so whether it was introduced in evidence or not, I am doubtful.

Mr. McHUGH. What Senate number is that?

Mr. HARRIS. That is Senate No. 61, and this purports to show the distribution of profits in thousands of dollars for the year 1942 to the year 1947, from which it appears that the net sales totaled \$1,079,019,000 during that period, the net income \$207,655,000.

Mr. McHUGH. That is from 1924 to 1947?

Mr. HARRIS. That's right.

Mr. McHUGH. Total?

Mr. HARRIS. That is, I take it, practically the patent period. Royalties paid to General Motors, \$43,369,000; Ethyl dividends paid to General Motors, \$82,632,000; Ethyl dividends paid to Standard Oil, \$82,632,000; and Du Pont profits, \$86,692,000.

(Committee exhibit 61 is as follows:)

GOVT. TRIAL EX. No. 834

Tetraethyl lead—The distribution of profits

[In thousands of dollars]

Year	Ethyl Net Sales	Ethyl Net Income	Royalties Paid to General Motors	Ethyl Dividends Paid to General Motors	Ethyl Dividends Paid to Standard Oil	Du Pont Tetraethyl Profits ¹
1924.....	\$2,036	\$(64)	-----	-----	-----	(\$289)
1925.....	849	(1,357)	-----	-----	-----	357
1926.....	2,920	(1,212)	-----	-----	-----	(14)
1927.....	5,495	(99)	-----	-----	-----	771
1928.....	8,223	1,587	-----	-----	-----	1,385
1929.....	19,276	5,263	\$1,000	\$1,000	\$1,000	3,654
1930.....	24,931	6,863	2,170	2,700	2,700	4,613
1931.....	26,867	7,555	2,206	4,331	4,331	4,695
1932.....	16,038	3,708	1,144	2,700	2,700	1,784
1933.....	22,767	5,793	1,628	2,350	2,350	3,472
1934.....	33,177	8,538	2,647	3,950	3,950	4,628
1935.....	34,476	8,566	2,495	4,250	4,250	5,519
1936.....	37,348	9,185	2,737	4,400	4,400	4,882
1937.....	45,498	10,964	3,104	4,750	4,750	5,262
1938.....	49,805	11,746	2,845	5,000	5,000	4,783
1939.....	64,363	18,483	4,412	8,500	8,500	5,534
1940.....	81,674	20,508	4,335	8,750	8,750	6,902
1941.....	88,356	19,181	3,408	8,500	8,500	6,509
1942.....	61,972	9,118	1,446	2,513	2,513	3,942
1943.....	81,943	11,765	2,151	4,688	4,688	3,918
1944.....	97,928	12,854	2,182	4,875	4,875	3,853
1945.....	105,464	15,366	1,775	4,125	4,125	3,800
1946.....	76,132	13,285	1,606	3,300	3,300	3,948
1947.....	91,481	10,059	78	1,950	1,950	2,784
Total.....	\$1,079,019	\$207,655	\$43,369	\$82,632	\$82,632	\$86,092

¹ Does not include profits derived from supply of materials used in production of tetraethyl lead and ethyl fluid.² Includes \$29,333 dividends paid to du Pont.³ Includes \$31,667 dividends paid to du Pont.

NOTE.—Figures in parentheses indicate loss.

Tetraethyl lead—The distribution of profits (continued)—Production pursuant to the manufacturing service agreement (Jan. 1, 1938–Dec. 31, 1947)

[Millions of pounds]

Year	Production as to which du Pont received one-third of the profits	Production as to which du Pont received one-tenth of the profits	Year	Production as to which du Pont received one-third of the profits	Production as to which du Pont received one-tenth of the profits
1938.....	53.0	24.8	1943.....	53.0	133.5
1939.....	53.0	37.2	1944.....	53.0	188.8
1940.....	53.0	95.2	1945.....	53.0	170.8
1941.....	53.0	97.7	1946.....	53.0	92.1
1942.....	53.0	94.0	1947.....	53.0	144.6

Source: Organic Chemicals Department.

Mr. McHUGH. Mr. Harris, were there any antitrust suits brought against the Ethyl Corp. for violation of the antitrust laws?

Mr. HARRIS. Yes, there were, arising out of the use of the patent, the license dealers or distributors, who in turn adopted a system of licensing dealers.

The system was that if you were not a licensed dealer, you could not buy tetraethyl lead, and the Supreme Court upheld a holding of the invalidity of the licensing of these dealers, holding that the patent could not be extended in this fashion in the hands of one who had purchased from the patentee.

The entire industry was tied up by these licenses, and unless you kept to the price and to the production policies of the distributors, you could not sell ethyl.

Mr. McHUGH. This then in substance was a charge of an illegal pricing arrangement by the licensor?

Mr. HARRIS. The illegal misuse of the patent.

Mr. McHUGH. For the purpose of controlling prices?

Mr. HARRIS. Fixing prices and distribution.

Senator O'MAHONEY. What happened?

Mr. HARRIS. The Supreme Court sustained the invalidity.

Senator O'MAHONEY. Yes, you said that, but what happened?

Mr. HARRIS. That I don't know, sir. I merely look at the law-books.

Mr. McHUGH. Was there a consent judgment entered in that case?

Mr. HARRIS. I don't think it was consent.

Mr. McHUGH. This was litigated?

Mr. HARRIS. I think it was rather heavily litigated.

Mr. McHUGH. Did the court litigate the question of relief or was that done by agreement among the parties?

Mr. HARRIS. I don't think there was any agreement in the case at all. All I know is by looking at the books. It was a hotly contested case and I think the court, one of the courts, the district court or the court of appeals, held that the exercise of the patent power was invalid, and that was sustained by the Supreme Court, and the licenses were held invalid.

Mr. McHUGH. The judgment of the Court then, you believe, would probably remove any of the illegal restrictions upon the distributors?

Mr. HARRIS. Oh, there is no question about that. Otherwise you would fly in the face of a declared opinion that it is illegal.

They held that it was not illegal because, among other things, they held they have to license these people because tetraethyl lead was a dangerous element, and the Court held there was nothing to that. They said that was one of the reasons why they licensed them.

Mr. McHUGH. These documents show, Mr. Harris, that the General Motors Corporation at all times was obtaining 50 percent of the profits of the Ethyl Corp. while it was in existence.

Mr. HARRIS. There was some dispute as to that, as to whether it was a 50-percent split. It was contended by the Government that it was 1, 2, 3; in other words, they each got a third of the total profits. There was a contention that if you figured it out on a different basis, it wouldn't come out quite that way.

Mr. McHUGH. Mr. Harris, did you discover in the course of your investigation of the Du Pont-United States Rubber-General Motors case that there was any evidence that the Du Pont Co. required its divisions or its employees to purchase their automotive requirements from General Motors?

Mr. HARRIS. In answer to that, Mr. McHugh, I was given by counsel for the committee the documents which I now have which are marked 63 to 73. These documents I generally recall having seen.

I was not in the investigation but during the course of the trial I have seen them, and I understand that they were delivered to the counsel of the committee by the midwest office of the Antitrust Division. I recognize having seen the subject matter before.

Mr. McHUGH. Are these documents marked "Senate Committee No. 63 through 73"?

Mr. HARRIS. Yes, sir.

They also bear a court reporter's number, but I am informed they were not offered in evidence, and the fact that they bear a court reporter's number means that we numbered all of our documents before the trial to save the time of the court, and some of the documents that were numbered were not offered, and I believe these were not.

Mr. McHUGH. Were these documents rejected by the court or were they never offered by any party?

Mr. HARRIS. No, they wouldn't be offered.

Mr. McHUGH. Then will you explain from these documents whether there was any evidence of the type of reciprocity which I have just spoken of?

Mr. HARRIS. Yes. The documents spoke, as will appear in a minute, that there was an effort by Du Pont officials to get the employees of the Du Pont Co. to buy General Motors cars and General Motors trucks in business of the company—cars for their personal use and trucks for Du Pont Co. use.

The first exhibit is committee 63, a letter under date of March 20, 1918, a statement rather of the action of the executive committee, which is being addressed to the heads of all departments:

At meeting of the executive committee, held on the 19th instant, the following resolution was unanimously adopted:

"Resolved, That the heads of departments of this company be advised that the Du Pont Co. has acquired a very substantial interest in the General Motors and Chevrolet Motor Cos., and that it is the wish of the executive committee that all motor equipment purchased in the future for this company be of General Motors or Chevrolet manufacture."

Signed by the executive committee.

(The letter referred to is as follows:)

Government Exhibit 516. In the District Court of the United States, Northern District of Illinois, Eastern Division. Before La Buy, J. Harry A. Harnden, Official Court Reporter)

MARCH 20, 1918.

To: Heads of Departments.

PURCHASE OF MOTOR EQUIPMENT

At meeting of the Executive Committee, held on the 19th inst., the following resolution was unanimously adopted:

"RESOLVED, that the Heads of Departments of this Company be advised that the du Pont Company has acquired a very substantial interest in the General Motors and Chevrolet Motor Companies, and that it is the wish of the Executive Committee that all motor-equipment purchased in the future for this Company be of General Motors or Chevrolet manufacture."

SEC'Y EXECUTIVE COMMITTEE,

F. L. Connable.

H. M. Barksdale.

Messrs. P. S. du Pont, Alexis I. du Pont, J. J. Raskob, C. Copeland, Frank Turner, E. N. Wead, Lamot du Pont, H. G. Haskell, Irénée du Pont, H. F.

Brown, C. L. Reese, H. M. Pierce, Wm. Coyne, F. G. Tallman, J. P. Laffey, Daniel Cauffiel, R. R. M. Carpenter, E. G. Buckner, C. M. Barton.

NOTE.—“X-1100” is written at top. Check mark by hand appears in front of each name at bottom. Italics indicate handwriting.

Mr. HARRIS. Document 64, which was exhibit No. 517 on the top, is dated July 23, 1918, and is a notice to the heads of departments concerning the purchase of motor equipment, and gives the resolution which I have just read :

At executive committee meeting July 22, it was moved and unanimously carried that the various departments be advised that they are expected, if practicable, to purchase equipment of General Motors manufacture, but in special cases where such procedure is not practicable the departments are expected to use their own judgment in the matter.

(The letter above referred to is as follows:)

(Government Exhibit 517. In the District Court of the United States, Northern District of Illinois, Eastern Division. Before La Buy, J. Harry A. Harnden, Official Court Reporter)

JULY 23, 1918.

Heads of Departments :

PURCHASE OF MOTOR EQUIPMENT

Referring to the following resolution adopted by the Executive Committee at meeting March 19, 1918, in connection with the above-mentioned subject :

“RESOLVED, that the Heads of Departments of this Company be advised that the du Pont Company has acquired a very substantial interest in the General Motors and Chevrolet Motor Companies, and that it is the wish of the Executive Committee that all motor equipment purchased in the future for this Company be of General Motors or Chevrolet manufacture.”

At Executive Committee meeting July 22nd, it was moved and unanimously carried that the various Departments be advised that they are expected, if practicable, to purchase equipment of General Motors manufacture, but in special cases where such procedure is not practicable the Departments are expected to use their own judgment in the matter.

/s/ M. D. FISHER,
Sec'y Executive Committee.

NOTE.—“Return to Executive Committee Room 9069” is stamped at bottom and “X-1100” is written at top.

Mr. HARRIS. Committee 65, headed 519, is a letter addressed by Ford, assistant director of the explosives manufacturing department, to Kinsley, assistant to the president, on January 15, 1921, with copies to Lamot, and so on.

Mr. McHUGH. These are officials in the Du Pont Corp.?

Mr. HARRIS. Yes.

Motor trucks: Mr. Lamot du Pont just called me up and told me that from a conversation with Mr. Beardsley of the General Motors Corp. in New York, he had learned that you were in the market for a new truck. Also that you had a truck in service of other make than that of General Motors'. He drew my attention to a decision that was arrived at some 2 years ago, that whenever practicable, General Motors' trucks should be used by this company. Wherever impracticable, the decision of using equipment of other makes was left to the heads of the departments. Mr. Beardsley told Mr. du Pont that the Scranton agent of the General Motors had made a proposition upon a truck and you had turned it down and decided to purchase one of another make.

I believe, if you have not yet made the purchase, that it would be well for you to present to you your reasons for not using General Motors' equipment and for desiring to make this purchase. The divisional council (the new form of control) would then consider your reasons and [give] you, obtain from department head or withhold, the necessary permit.

If you have made the purchase, this advice will undoubtedly guide you in future transactions.

It is very obvious that Du Pont Co. ought to be able to use the equipment of the corporation in which it is so largely interested. If their trucks are not adequate for our use, they should be advised as to their deficiency. I am sure that your president will agree in this feeling. At any rate, we should follow the order of the executive committee in this matter and perhaps you were not advised at the time it was made; but please understand now that they did make this ruling and that we should be governed thereby.

(Committee exhibit 65 referred to is as follows:)

Government Exhibit 519. In the District Court of the United States, Northern District of Illinois, Eastern Division. Before La Buy, J. Harry A. Harnden, Official Court Reporter)

E. I. DU PONT DE NEMOURS & COMPANY (INCORPORATED),
PRODUCTION DEPARTMENT,
Wilmington, Delaware, January 15, 1921.

Explosives Manufacturing Dept.

File ED— EHF.

Mr. H. R. KINSLEY, Asst. to Pres.

(Copies to: Mr. Lammot du Pont, Mr. L. P. Mahony, Dir. of Sale.)

MOTOR TRUCKS

Mr. Lammot du Pont just called me up and told me that from a conversation with Mr. Beardsley of the General Motors Corporation in New York, he had learned that you were in the market for a new truck. Also that you had a truck in service of other make than that of General Motors'. He drew my attention to a decision that was arrived at some two years ago, that whenever practicable, General Motors' trucks should be used by this company. Wherever impracticable, the decision of using equipment of other makes was left to the heads of the Departments. Mr. Beardsley told Mr. du Pont that the Scranton Agent of the General Motors had made a proposition upon a truck and you had turned it down and decide to purchase one of another make.

I believe, if you have not yet made the purchase, that it would be well for you to present to us your reasons for not using General Motors' equipment and for desiring to make this purchase. The Divisional Council (the new form of control) would then consider your reasons and [give] you obtain from Dept. Head or withhold, the necessary permit.

If you have made the purchase, this advice will undoubtedly guide you in future transactions.

It is very obvious that duPont Co. ought to be able to use the equipment of the corporation in which it is so largely interested. If their trucks are not adequate for our use, they should be advised as to their deficiency. I am sure that your President will agree in this feeling. At any rate, we should follow the order of the Executive Committee in this matter, and perhaps you were not advised at the time it was made; but please understand now that they did make this ruling and that we should be governed thereby.

ED. H. FORD, Asst. Director.

EHF-P

NOTE.—Italics indicate handwriting. A handwritten arrow points to Mr. Lammot du Pont's name at top of first page and lines are drawn through the name of the addressee. "Received Jan 17 Lammot du Pont" is stamped at top of first page. "Return to Executive Committee Room 9069" is stamped at bottom of each page. "X-1100" and "8" (with a large check mark) are written at top of first page. "GMC 1527" is written at bottom of each page.

Mr. HARRIS. 66 was the letter of January 17, 1921, from Kinsley to Ford. He notes with interest what we said:

The matter of the truck in question was one of replacement and not additional new equipment. We had on hand a Maccar truck which was worn out and upon which the repairs would have cost more than it would have been worth to us. It was decided, therefore, to replace this with a new one. The proposition was

submitted to the General Motors agent here, and naturally also to the Maccar people. The Maccar truck is assembled in Scranton. We have several of them in our division.

The General Motors agent knew just what the proposition was, and upon submission of their terms we found that they did not compare with those submitted by the Maccar for this replacement. As we know what the Maccar truck can do here, and as it was a better business proposition, we of course accepted the Maccar offer.

In this connection would say that the General Motors people here did not make as good an offer as they could have done. We know this from what they told outside afterward. We feel in this division that it is up to us to make as good terms on purchases of equipment as possible. We do not feel that General Motors agents are entitled to any particular advantages if they don't appreciate the situation.

At any time that we are in the market for entirely new equipment, we will, of course, consider that we should buy General Motors products, but in replacement propositions, if it is possible to get better terms from manufacturers whose trucks are up for replacement, we think it good business to accept those better terms.

(The letter above referred to is as follows:)

(Government Exhibit 520. In the District Court of the United States, Northern District of Illinois, Eastern Division. Before La Buy, J. Harry A. Harnden, Official Court Reporter)

E. I. DU PONT DE NEMOURS & COMPANY OF PENNSYLVANIA,

Scranton, Pa., January 17, 1921...

Address all communications to the company.
Refer to our file No. 2621.

To: Ed. H. Ford, Asst. Director.
From: Scranton.

AUTO TRUCKS. YOUR LETTER JANUARY 15TH

We note with interest what you say in regard to conversation of Mr. Lamott DuPont with Mr. Beardsley of the General Motors Corporation. The matter of the truck in question was one of replacement and not additional new equipment. We had on hand a Maccar truck which was worn out and upon which the repairs would have cost more than it would have been worth to us. It was decided therefore to replace this with a new one. The proposition was submitted to the General Motors agent here and naturally also to the Maccar people. The Maccar truck is assembled in Scranton. We have several of them in our Division.

The General Motors agent knew just what the proposition was, and upon submission of their terms we found that they did not compare with those submitted by the Maccar for this replacement. As we know what the Maccar truck can do here, and as it was a better business proposition, we, of course, accepted the Maccar offer.

In this connection would say that the General Motors people here did not make as good an offer as they could have done. We know this from what they told outside afterwards. We feel in this division that it is up to us to make as good terms on purchases of equipment as possible. We do not feel that the General Motors agents are entitled to any particular advantages if they don't appreciate the situation.

At any time that we are in the market for entirely new equipment we will, of course, consider that we should buy General Motors products, but in replacement propositions, if it is possible to get better terms from manufacturers whose trucks are up for replacement we think it good business to accept those better terms.

H. R. Kinsley,
Asst. to President.

HRK

NOTE.—"Return to Executive Committee Room 9069" is stamped, and GMC 1528A" is written, at bottom of page. Italics indicate handwriting.

Mr. McHUGH. Then the complaint with reference to this particular truck was only in connection with a replacement truck?

Mr. HARRIS. That's right, sir.

Then came a note dated January 19, 1921, Ford to Belin, the president, on auto trucks, concerning this letter:

I beg to thank you for yours of above date. It was read at the council meeting held this morning. The consensus of opinion was (Mr. Mahony being absent from the meeting) that even replacements should be made with General Motors' products and that such was the intent of the executive resolution. A few instances in the past were referred to by the purchasing department's representative; the decisions in the cases confirmed this.

However, I will discuss this matter with you.

Mr. McHUGH. Is that the end of that letter?

Mr. HARRIS. Yes. [Reading:]

I am sure that we will do nothing in the future which will merit censure.

(Committee Exhibit 67 referred to is as follows:)

(Government Exhibit 521. In the District Court of the United States, Northern District of Illinois, Eastern Division. Before La Buy, J. Harry A. Harnden, Official Court Reporter)

E. I. DU PONT DE NEMOURS & COMPANY (INCORPORATED),
PRODUCTION DEPARTMENT,
Wilmington, Delaware, January 19, 1921.

Explosives Manufacturing Dept.

File ED EHF.

(Copies to: Mr. Lamot du Pont, Mr. L. P. Mahony, Dir. Sales, Mr. A. J. Abrams.)
Mr. G. D. A. BELIN, Pres.

AUTO TRUCKS

Mr. Kinsley's letter Jan. 17, 1921.

Your file 2621.

I beg to thank you for yours of above date. It was read at the Council Meeting held this morning. The consensus of opinion was (Mr. Mahony being absent from the meeting) that even replacements should be made with General Motors' products and that such was the intent of the Executive resolution. A few instances in the past were referred to by the Purchasing Department's representative; the decisions in the cases confirmed this.

However, I will discuss this matter with you when you come on for the next meeting. I am sure that we will do nothing in the future which will merit censure.

ED. H. FORD, Asst. Director.

EHF-p

NOTE.—A handwritten arrow points to Mr. Lamot du Pont's name at top and "Received Jan 20 Lamot du Pont" is stamped at top of page. "X-1100" is written at top of page and "Return to Executive Committee Room 9069" is stamped at bottom of page. "GMC 1528" is written at bottom of page. A large check mark appears at the top center of the page.

Mr. HARRIS. The next letter is November 4, 1921, and it is from Patterson, general manager, apparently a notice to a number of officials:

For your information, I am enclosing herewith copy of letter which I have just sent out to all the sales managers, plant managers, and plant superintendents of this department.

I feel that whenever we can say a good word about any General Motors product and encourage a possible sale thereby, we should do so. I also feel that everyone in this department agrees with me in that the products turned out by the General Motors Corp. are worthy of our best recommendations.

And he has two letters enclosed:

I am enclosing herewith extract from a letter which was written by Mr. Pierre S. du Pont, president of the General Motors Corp., to all the corporation's stockholders. You probably have seen this letter. However, when I

read it the thought struck me that as the du Pont Co. owns a very large block of the General Motors Corp.'s stock, it might be in order for me to write to a few of this company's important employees with the object in view of encouraging, through them to their assistants and to any employees with whom they may come in contact, a feeling which would encourage the boosting of General Motors products whenever there is an opportunity.

The General Motors Corp. turns out, as we all know, a complete line of very high-class cars, any one of which is, in my opinion, superior to other cars at or near their prices; and I feel that each and every one of us can honestly and proudly help all of our friends who are handling the Chevrolet, Oakland, Buick, Oldsmobile and Cadillac passenger cars, or the Chevrolet, Oldsmobile and GMC commercial cars, by encouraging the purchase of one of these makes whenever and wherever the opportunity offers.

The other letter is a letter from Pierre du Pont to his stockholders plugging for the General Motors car:

Employees and stockholders are potential missionaries for General Motors, the institution—and users of General Motors cars are word-of-mouth advertisers of the products General Motors sponsors. If each of the employees and stockholders would interest himself to the extent of helping to convert but one new buyer a year, sales would be 33 percent greater and profits accordingly larger.

Senator O'MAHONEY. That was exhibit 68?

Mr. HARRIS. That was exhibit 68, sir.

(The letter by Patterson referred to is as follows:)

Government Exhibit 522 Defendants Exhibit () Idem. () Rec'd.
 In the District Court of the United States, before
 Northern District of Illinois, Eastern Division at CHICAGO, ILL.
 No. _____

Government Exhibit No. 273

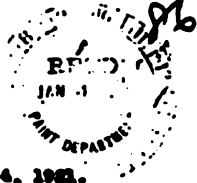
Harry A. Harnden - Official Court Reporter

E. I. du Pont de Nemours & Co.
 INCORPORATED

WILMINGTON, DELAWARE

EXPLOSIVES MANUFACTURING DEPARTMENT

VICE-PRESIDENT'S OFFICE



November 4, 1941.
 File No-827.

MEMBER, A. F. FALL, JUDGE
 J. THOMAS BROWN
 J. D. MC JOY
 E. H. FORD
 W. I. STAKER

L. F. HANCOCK
 L. O. BRYAN
 A. E. CALVIN
 E. K. V. GILLEY
 F. L. BRINKLEY

For your information, I am enclosing herewith copy of letter which I have just sent out to all the Sales Managers, Plant Managers, and Plant Superintendents of this Department.

I feel that whatever we can say a good word about any General Motors product and encourage a possible sale thereby, we should do so. I also feel that everyone in this Department agrees with me in that the products turned out by the General Motors Corporation are worthy of our best recommendations.

D. L. PATTERSON.

GENERAL HANCOCK.

CAPM

*Print Dept
 were direct to appear
 to Blackbeard's
 H. H. Small*

NOV 12 1941
 JAN 12 1942
 E. C. T. 827

*Produce Dept
 followed up on
 lead in the
 production
 11/14/41
 8me-776*

(The texts of the two enclosures follow.)

NOVEMBER 3, 1921.

I am enclosing herewith extract from a letter which was written by Mr. Pierre S. duPont, President of the General Motors Corporation, to all of the Corporation's stockholders. You probably have seen this letter. However, when I read it the thought struck me that as the duPont Company owns a very large block of the General Motors Corporation's stock, it might be in order for me to write to a few of this Company's important employees with the object in view of encouraging, through them to their assistants and to any employees with whom they may come in contact, a feeling which would encourage the boosting of General Motors products whenever there is an opportunity.

The General Motors Corporation turns out, as we all know, a complete line of very high-class cars, any one of which is, in my opinion, superior to others cars at or near their prices; and I feel that each and every one of us can honestly and proudly help all of our friends who are handling the Chevrolet, Oakland, Buick, Oldsmobile, and Cadillac passenger cars, or the Chevrolet, Oldsmobile and G. M. C. commercial cars, by encouraging the purchase of one of these makes whenever and wherever the opportunity offers.

GENERAL MANAGER.

EAH

NOVEMBER 1ST, 1921.

To the STOCKHOLDERS:

There are 133,500 in the General Motors immediate family—68,000 stockholders, 53,000 employees, and 12,500 dealers and distributors. All are financially concerned in the success and the prosperity of the Corporation. And there are many other interested besides the immediate members of the family.

Since 1909 the Corporation has produced over two million passenger and commercial cars, of which approximately 72 percent are now in use in this country. As there are over nine million motor cars in this country, one out of every six is a General Motors product.

Members of the immediate family share in the profits from every sale. The dealers and distributors receive commissions, the employees their wages, the stockholders their dividends; obviously, the greater the number of cars sold, the large the amount of money available for these purposes. Users of General Motors cars also benefit because behind the product is the strength of a financially successful institution.

Employees and Stockholders are potential missionaries for General Motors, the institution—and users of General Motors cars are word-of-mouth advertisers of the products General Motors sponsors. If each of the employees and stockholders would interest himself to the extent of helping to convert but one new buyer a year, sales would be 33 percent greater and profits accordingly larger.

PIERRE S. DU PONT.

President.

NOTE.—Stamp at upper right corner of first page bears date "JAN. 4, 1922." Stamp beneath that reads: "GENERAL MANAGER PYRALIN DEPARTMENT RECEIVED JAN. 14, 1922." At lower right corner of third page, handwriting reads: "gmc-776b."

Mr. HARRIS. 69 is the letter of January 20, 1922, from Patterson, general manager, to Sloan, and that covers the purchase of some $\frac{3}{4}$ -ton Sampson trucks, and he states that he has given positive orders to the effect that nothing but General Motors trucks and cars are to be purchased unless specific authority to the contrary is given. Then he says:

We have a number of General Motors trucks, and a few Chevrolet trucks, together with 15 or 20 Ford trucks which have been in use for some years. When the Ford trucks are replaced the new trucks will be General Motors products.

(The letter above referred to is as follows:)

(Government Exhibit 523. In the District Court of the United States, Before Northern District of Illinois, Eastern Division. Before La Buy, J. Harry A. Harnden, Official Court Reporter)

E. I. DU PONT DE NEMOURS & COMPANY, INCORPORATED,
EXPLOSIVES DEPARTMENT,

Wilmington, Delaware, Jan. 20th, 1922.

Copy to: Mr. Ireneé du Pont.

Mr. ALFRED P. SLOAN, JR.,

V. P., General Motors Corporation, 224 West 57 St., New York City.

DEAR SIR: Your letter, dated January 13th, addressed to Mr. Ireneé du Pont, on the subject of the possible purchase by us of five $\frac{3}{4}$ -ton Sampson trucks, has been referred to me for attention.

In the first place, I wish to advise you that for some time past this Department has given positive orders to the effect that nothing but General Motors trucks and cars are to be purchased by any of our divisions, unless specific authority to the contrary is given by the Head of the Department.

We have a number of General Motors trucks, and a few Chevrolet trucks, together with fifteen or twenty Ford trucks which have been in use for some years. When the Ford trucks are replaced the new trucks will be General Motors products, although we cannot approve of their replacement by the Sampson truck where the transportation of explosives is concerned. This is on account of our ruling that trucks used for the transportation of explosives must be of a type which has the engine well separated from the gasoline tank, it being obvious that if the engine is located practically below the gasoline tank a fire in or about the engine might cause us a great deal of trouble.

For your personal information I wish to state that at present we are having a study made of the cost of operation per mile of the various trucks which we have used in the past and from the rough estimates which the writer has been able to accumulate, it looks as though, from a dollars-and-cents point of view, we should not use anything but Ford trucks for our light hauling.

When the figures are complete, if the investigation shows that they can be relied upon, I shall submit them to you. However, we want to assure you that, regardless of the figures, it is our intention to replace our trucks and cars, as they are discarded, with a General Motors product.

Yours very truly,

C. A. PATTERSON, General Manager.

NOTE.—Stamp at right, near center, reads: "RECEIVED JAN. 23, 1922, A. P. SLOAN, JR." Pencil notation at end of last paragraph appears after "A. P. S.", the check mark beneath it after "[Illegible]", and check mark below the first check mark after "A. T. B.", of routing stamp containing the initials "A. P. S.", "J. L. P.", "P. * * * [Illegible]", "[Illegible]" and "A. T. B."

Mr. HARRIS. Exhibit 70 is a covering letter July 10, 1922, from Irénée du Pont to the director of advertising, attaching a suggestion from Naylor of the treasurer's department:

I think the principle is a good one. Could you not draw up a letter which starting on the idea of boosting General Motors sales, would end with a boost for Du Pont products, and which might be sent out to our employees and stockholders in the form of a letter from the president.

And then you have the suggestion of Mr. Naylor, which is:

Having observed that quite a number of employees have purchased, this year, cars of other than GMO make, it occurs to me that a letter from the president sent to all employees calling their attention to following points should have the effect of turning the most of future purchases of cars by employees in favor of GMO.

1. The company's large investment in GMO.
2. Thirty-seven percent of GMO earnings accrue to Du Pont Co., and the larger GMO earnings, the larger will be the amount distributed, resulting in—
3. Larger sales of Du Pont products, larger distribution to stockholders, and larger amounts available for Du Pont welfare plans (bonus and participating stock subscription).
4. A boost for GMO is a boost for Du Pont.

It closes with a paragraph asking—

employees to give same support to increasing GMO sales as they would to sale of Du Pont products.

(The letters and memo referred to are as follows:)

(Government Exhibit 524. In the District Court of the United States, Northern District of Illinois, Eastern Division. Before La Buy, J. Harry A. Harnden, Official Court Reporter)

E. I. DU PONT DE NEMOURS & COMPANY, INCORPORATED,
July 10, 1922.

Mr. C. F. BROWN,
Director of Advertising.

Attached is a suggestion from Mr. Naylor of the Treasurer's Department. I think the principle is a good one. Could you not draw up a letter which, starting on the idea of boosting General Motors sales, would end with a boost for Du Pont products, and which might be sent out to our employees and stockholders in the form of a letter from the President. Please return the memo with your suggestion.

IRÉNÉE DU PONT.
Irénée du Pont.

Encl.

Effect on other car mfrs.: Fab, Top material, Pyr Sheeting, Flint.

NOTE.—"GMC 1556" is written in lower right corner. Italics indicate handwriting.

E. I. DU PONT DE NEMOURS & COMPANY (INCORPORATED),
JULY 14, 1922.

Mr. W. S. CARPENTER, Jr.:

I have forwarded the attached to Mr. Brown. He has replied orally that he fears following Mr. Naylor's suggestion would result in a loss of business by du Pont that we now enjoy from competitors of General Motors. What do you think of the situation?

enclosure.

IRÉNÉE DU PONT.

NOTE.—"GMC 1556a" and "26" is written in lower right corner; "ID-152" is written in upper right corner; "NOTED W. S. C., Jr." is stamped twice at top of page.

Irénée: Naylor sent this on to me as a suggestion. W S C Jr.

MEMORANDUM

JUNE 23, 1922.

RE EMPLOYEES PURCHASING GMO CARS

Having observed that quite a number of employees have purchased this year, cars of other than GMO make, it occurs to me that a letter from the President sent to all employees calling their attention to following points should have the effect of turning the most of future purchases of cars by employees in favor of GMO.

1. The Company's large investment in GMO.
 2. 37 percent of GMO earnings accrue to Du Pont Company, and the larger GMO earnings, the larger will be the amount distributed, resulting in
 3. Larger sales of Du Pont Products, larger distribution to stockholders, and larger amounts available for Du Pont Welfare plans (Bonus and Participating Stock Subscription).
 4. A "Boost" for GMO is a "Boost" for Du Pont.
- Closing with a paragraph asking the employees to give same support to increasing GMO sales as they would to sale of Du Pont products.

G. L. NAYLOR.

"Good [followed by an illegible word]"

NOTE.—"GMC 1556b" is written in lower right corner. Italics indicate handwriting.

Mr. HARRIS. Then in 71 the resolutions which the Senator has already heard, showing they were adopted again:

It was moved and unanimously carried that the various departments be advised that they are expected if practicable, to purchase equipment of General Motors manufacture, but in special cases where such procedure is not practicable the departments are expected to use their own judgment in the matter.

(The memorandum referred to is as follows:)

(Government Exhibit 518. In the District Court of the United States, Northern District of Illinois, Eastern Division. Before La Buy, J. Harry A. Harnden, Official Court Reporter)

DECEMBER 6, 1923.

To: Heads of Departments.

From: Secretary.

W. P. A.

JFB

HG.

FRD

AFduP

WFH

JBDE.

WSC Jr.

HMP

CLR

CFB

WBF

FS

PSduP

JJR

CC

JBE

CMB

Gd. AB

HG. for F. V. & C. W.

H. G. for Am Glyc. Co.

MOTOR EQUIPMENT—PURCHASE OF

At meeting of the Executive Committee held yesterday, the following resolution was unanimously adopted:

X-5

"RESOLVED, that the actions taken by this Committee under date of March 19, 1918 and July 22, 1918, regarding purchase of motor equipment be rescinded that the various Departments of this Company be advised that they are expected, other things being equal, to purchase equipment of General Motors manufacture."

The actions taken by the Committee under date of March 19, 1918 and July 22, 1918 were as follows:

March 19, 1918: "The following resolution was unanimously adopted:

"RESOLVED, that the Heads of Departments of this Company be advised that the du Pont Company has acquired a very substantial interest in the General Motors and Chevrolet Motor Companies, and that it is the wish of the Executive Committee that all motor equipment purchased in the future for this Company be of General Motors or Chevrolet manufacture."

July 22, 1918: "It was moved and unanimously carried that the various Departments be advised that they are expected, if practicable, to purchase equipment of General Motors manufacture, but in special cases where such procedure is not practicable the Departments are expected to use their own judgment in the matter."

M. D. FISHER,

Sec'y. Executive Committee.

23.

NOTE.—Italics indicate handwriting. "X-1100" is written at top and "Return to Executive Committee Room 9069" is stamped at bottom.

Mr. HARRIS. Then you have 72 and 73, communications by first an official, Furst, to Mr. Richter referring to this telegram.

Mr. McHUGH. Mr. Harris, will you give us the dates?

Mr. HARRIS. January 3, 1931, this is.

Mr. McHUGH. That is Senate exhibit 72?

Mr. HARRIS. That's right, sir, 525. The letter is to Richter, the general manager, by a man named Furst of the Cleveland office:

Referring to your telegram reading:

"Still feel from company viewpoint we ought not to buy White truck. Stop. We should look at it from viewpoint of considering GM member of family. Stop.

If GM were Du Pont subsidiary or Du Pont department we wouldn't think of buying White truck, would we. Stop. Will be in Cleveland with Martin tomorrow and have made another appointment at your office for 2 o'clock after which we ought to have opportunity to talk about this truck question finally."

Then he goes on:

I feel you know the interest of the Du Pont Co. is always foremost in the minds of all of our people here; it is, therefore, apparent that we should use nothing but GM trucks in view of the Du Pont Co.'s large interest in General Motors, and that policy will be followed.

Personally, I believe the meeting our people recently had with representatives of the General Motors at Detroit has been helpful, since it gave us an opportunity to acquaint those at the top with the difficulties we have experienced with some of their equipment and service. In any event, it developed the fact that they expect to have on the market in the near future a new heavy-duty truck which we are hopeful will answer our special purposes, of which we expect to buy at least two as soon as they are available.

We welcome suggestions looking toward the improvement of our products and service, and I think it is pretty safe to assume the GM likewise is desirous of establishing not only close but enduring relations with its customers at least, that was the impression our people gained on their Detroit visit.

(Committee exhibit 72 referred to is as follows:)

(Government Exhibit 525. In the District Court of the United States, Northern District of Illinois, Eastern Division. Before La Buy, J. Harry A. Harnden, Official Court Reporter)

CLEVELAND OFFICE

CLEVELAND, OHIO, January 3, 1931.

Mr. WM. RICHTER,
General Manager, *Fabrics and Finishes Department*,
Wilmington, Delaware:

Referring to your telegram reading:

"Still feel from Company viewpoint we ought not to buy White truck. Stop. We should look at it from viewpoint of considering GM member of family. Stop. If GM were duPont subsidiary or duPont department we wouldn't think of buying White truck, would we. Stop. Will be in Cleveland with Martin tomorrow and have made another appointment at your office for two o'clock after which we ought to have opportunity to talk about this truck question finally."

I feel you know the interest of the duPont Company is always foremost in the minds of all of our people here; it is, therefore, apparent that we should use nothing but G. M. trucks in view of the duPont Company's large interest in General Motors, and that policy will be followed.

Personally, I believe the meeting our people recently had with representatives of the General Motors at Detroit has been helpful, since it gave us an opportunity to acquaint those at the top with the difficulties we have experienced with some of their equipment and service. In any event, it developed the fact that they expect to have on the market in the near future a new heavy duty truck which we are hopeful will answer our special purposes, of which we expect to buy at least two as soon as they are available.

We welcome suggestions looking toward the improvement of our products and service, and I think it is pretty safe to assume the G. M. likewise is desirous of establishing not only close but enduring relations with its customers at least that was the impression our people gained on their Detroit visit.

(E. W. FURST.)

EWf:RJL

Mr. HARRIS. And Furst wrote then to Mr. Lamont du Pont on the 8th of January 1931, exhibit 73, top number 526:

DEAR MR. DU PONT: We very much appreciate your letter of the 2d, re trucks, with which we are in full accord.

You may be interested in knowing that our experience with GM light trucks has been entirely satisfactory.

Since the performance of GM heavy-duty trucks in use at Brasselli, N. J., has been a matter of some concern, in that mechanical difficulties developed, resulting in rather high repair bills, we, a couple of weeks ago, suggested to Mr. Richter that we acquaint the management of General Motors truck department at Detroit with the situation, as we saw it, in the belief that a full discussion of the problem would be of benefit not only to the General Motors but to us. This met with Mr. Richter's approval, and a very satisfactory conference was recently had in Detroit, at which the defects which have developed in the GM equipment we have in use were thoroughly gone into.

The conference developed the fact that the GM expect to place on the market within the next 60 days or 90 days a new heavy-duty truck.

Mr. McHUGH. Mr. Harris, do you know how long this resolution of the Du Pont Corp. was in effect requiring the purchasing of General Motors equipment?

Mr. HARRIS. No, sir; I do not.

(The letter referred to is as follows:)

(Government Exhibit 526. In the District Court of the United States, Northern District of Illinois, Eastern Division. Before La Buy, J. Harry A. Harnden, Official Court Reporter)

THE GRASSELLI CHEMICAL CO., INCORPORATED,
Cleveland, Ohio, January 8, 1931.

Mr. LAMMOT DU PONT,
President, E. I. du Pont de Nemours & Company,
Wilmington, Delaware.

DEAR MR. DU PONT: We very much appreciate your letter of the 2nd, re trucks, with which we are in full accord.

You may be interested in knowing that our experience with G. M. light trucks has been entirely satisfactory.

Since the performance of G. M. heavy duty trucks in use at Grasselli, N. J., has been a matter of some concern, in that mechanical difficulties developed, resulting in rather high repair bills, we, a couple of weeks ago, suggested to Mr. Richter that we acquaint the Management of General Motors Truck Department at Detroit with the situation, as we saw it, in the belief that a full discussion of the problem would be of benefit not only to the General Motors but to us. This met with Mr. Richter's approval, and a very satisfactory conference was recently had in Detroit, at which the defects which have developed in the G. M. equipment we have in use were thoroughly gone into.

The conference developed the fact that the G. M. expect to place on the market within the next sixty or ninety days a new heavy duty truck which we have every reason to believe will fully answer our purposes. The attitude of their representatives was cooperative in every respect, and we are pretty well satisfied that our visit was worth while.

We are attaching a copy of our letter of January 3, to Mr. Richter, which explains our attitude on the use of G. M. equipment, which we hope will meet with your approval.

Very truly yours,

E. W. FURST.

E. W. Furst/RJL
Encl.

Mr. McHUGH. Did you make any study of Du Pont's purchases over the years to determine how much of its automotive requirements it obtained from General Motors?

Mr. HARRIS. If the study were made, it was not made by me. I only came in after the trial started, and I don't know the extent of the investigation before me.

Mr. McHUGH. Is it possible that this type of information would have no particular significance under the issues that were being litigated in the General Motors-Du Pont-United States Rubber suit?

Mr. HARRIS. I think that is what the Chief Counsel thought. He was the one who determined whether it went in or not.

Mr. McHUGH. Was there any evidence, Mr. Harris, that Du Pont induced or persuaded any of its suppliers to deal in General Motors products?

Mr. HARRIS. I don't know of any, sir. I don't know whether there was or not. I wouldn't say there wasn't.

Senator O'MAHONEY. Are there any other questions to be asked of Mr. Harris?

Mr. McHUGH. I think not, Senator.

Senator O'MAHONEY. This completes his testimony?

Mr. McHUGH. Yes.

Senator O'MAHONEY. Thank you very much, Mr. Harris.

Mr. HARRIS. Thank you, Senator.

Senator O'MAHONEY. Mr. Burns?

Mr. BURNS. General Motors Corp. is the dominant company in the bus-manufacturing industry, including both city and inter-city type buses. In 1925 the Yellow Truck & Coach Manufacturing Co. was organized, in which GM held a controlling interest. In September 1943, GM acquired all of the assets of Yellow Truck & Coach, and the company then became an operating division of GM. It is reported that GM now has in excess of 75 percent of the bus-manufacturing business in this country.

Some of the practices and arrangements engaged in by GM in the motorbus business were involved in criminal and civil suits brought by the Department of Justice in 1947 in Los Angeles, Calif. The defendants in these suits were National City Lines, Inc., Pacific City Lines, Inc., Firestone Tire & Rubber Co., Phillips Petroleum Co., Mack Manufacturing Corp., Standard Oil Company of California, Federal Engineering Corp., General Motors Corp., and certain individuals. This subcommittee is interested in determining what the facts were in this case and what the effect of the practices engaged in by GM and the other defendants were on competition in the bus industry. We are also interested in finding out what the effect of this litigation ultimately was with reference to the economics of the bus industry, and whether General Motors had obtained advantages which could not be dissipated by court action.

Mr. William C. Dixon, formerly Chief of the west coast office of the Antitrust Division, Department of Justice, who had supervision over these cases, will now explain the issues and facts involved.

Mr. McHugh will interrogate Mr. Dixon.

Mr. McHUGH. Mr. Dixon, do you have a prepared statement?

**STATEMENT OF WILLIAM C. DIXON, FORMER SPECIAL ASSISTANT
TO THE ATTORNEY GENERAL, AND CHIEF OF THE WEST COAST
OFFICE OF THE ANTITRUST DIVISION, DEPARTMENT OF JUSTICE**

Mr. DIXON. Yes. I will be glad to read it at this time for the record, Senator.

Senator O'MAHONEY. Thank you, Mr. Dixon. Do you have copies of it?

Mr. DIXON. Yes, I have a copy.

Mr. McHUGH. We will probably interrupt from time to time to ask questions.

Mr. DIXON. That is all right. If you have any questions about my statement, don't hesitate to inquire concerning it.

My name is William C. Dixon. I reside at 1915 East Mountain Street, Pasadena, Calif. I am an attorney and I am currently engaged in private practice, specializing in antitrust and trade-regulation matters, with offices at 417 South Hill Street, Los Angeles, Calif.

I have been requested by this committee to appear before you to give you such information as I can concerning a criminal and civil antitrust case which the Government brought against the National City Lines, Inc., and other defendants, including General Motors Corp., in the United States District Court for the Southern District of California, Central Division, on April 9 and 10, 1947, respectively. I am, of course, glad to supply any information possible in connection with these cases which may be of assistance to this committee.

By way of background, I should perhaps state that I am a member of the bars of California and Ohio and of the United States Supreme Court. I was appointed a Special Assistant to the Attorney General in April 1944 and assigned to the Antitrust Division of the Department of Justice. I resigned from the Department of Justice in January 1954 for the purpose of reentering private practice. While with the Antitrust Division I was Assistant Chief of the General Litigation Section of that Division and was chief trial counsel for the Government in many litigated antitrust cases, including the first cartel case, that is, *United States v. National Lead Company et al.*, which was released for trial by special Presidential order prior to the termination of the war in 1944. I was appointed chief of the west-coast offices of the Antitrust Division in 1946, and while serving as such was chief trial counsel for the Government in the so-called exclusive dealing cases which established the illegality of certain dealer exclusive dealing practices by the Standard Oil Company of California and the Richfield Oil Corp. While chief of the west-coast office of the Antitrust Division, I also personally conducted the grand-jury proceedings in the National City Lines, Inc., case, in which, I understand, your committee is interested.

Mr. McHUGH. Mr. Dixon, I wonder if at this point for the record you will explain just what the National City Lines Corp. is.

Mr. DIXON. The National City Lines Corp. is a holding company which was established in the middle thirties for the purpose of purchasing and operating local transit systems throughout the various cities of the country. It was primarily, as I have suggested, a holding corporation at its inception. Do you want me to go into the history of what happened?

Mr. McHUGH. Briefly can you tell us how extensive were its operations?

Mr. DIXON. Well, at the time these cases were tried, Senator, the National City Lines Cos. and its subsidiaries were operating local transit systems throughout the various parts of the country from coast to coast.

In the East they were operating the Baltimore Transit Line, in the Middle West the St. Louis Public Service Co., and in the South

they were operating several local transit systems in Texas, Oklahoma, and various other parts of the country.

Senator O'MAHONEY. Was this an operating company as well as a holding company?

Mr. DIXON. No; Senator. It was primarily a holding company.

Senator O'MAHONEY. You used the word "operating" too.

Mr. DIXON. Yes. The technique was to go out and buy up a local transit system and then, of course, keep that operation separate from the rest of the other operations through a separate subsidiary company. Their principal operations, however, were in the west coast area where—

Senator O'MAHONEY. I am trying to get the picture of the structure of this holding company. Where was the holding company incorporated?

Mr. DIXON. I have forgotten, Senator, the State of incorporation, but I believe it was Delaware.

It was the result of the plan of the Fitzgerald brothers in the thirties who conceived the idea of buying up and operating local transit systems throughout the country who, from their point of view, were not affording good transportation service to the areas in which they were operating, and as you may recall during the thirties, there were several transit systems throughout the country that could be acquired at fairly reasonable rates.

The buses were just beginning to become used for local operating purposes, and the old streetcar was rapidly going out of use in many cities. That was the atmosphere in which this project was conceived and developed.

As I suggested, their principal operations in the thirties were centered in the west coast area where, through the formation of Pacific City Lines in 1938, that being a wholly owned subsidiary or controlled subsidiary of the National City Lines, a large number of local transit systems which were then being operated by the Southern Pacific Railroad were purchased under a package deal and put into the Pacific City Lines.

Now, the money used to make those purchases was furnished in part by the supplier defendants that were named in a criminal action that you have asked me to discuss with the committee. In other words, the technique was to go out and secure from suppliers of buses, petroleum products, and tires, money which would be invested in these companies, the subsidiary companies of which the operating and holding company was the National City Lines, Inc.

The other main subsidiary was the Pacific City Lines that I have mentioned, and then subsequently in 1943 the American City Lines.

But by putting money or making so-called investments in the preferred stock of these companies, the defendants named in the criminal proceeding secured in effect all of the motor-bus business of the operating companies, the tire business went to the Firestone Tire & Rubber Co., which furnished part of the money for these companies and purchases, and then the petroleum products business went to the company in the area in which the company furnishing the money operated.

Mr. McHUGH. Mr. Dixon, did this plan for obtaining capital originate with the National City Lines officials or did the idea originate with various suppliers?

Mr. DIXON. Well, from the record in the case it would appear that the plan originated with the Fitzgerald brothers, and when they were unable to finance further acquisitions by the sale of stock to the public, they conceived the idea of approaching suppliers of products and getting them to invest "money" in these companies, with the understanding that that money would be used exclusively for the purchase or acquisition of additional local transit systems.

And as those companies were acquired, the previous suppliers immediately lost the business if it wasn't under contract, and the buses then went to the General Motors, petroleum products went to Standard of California in the west coast area in which it operated, in the Middle West area it went to the Phillips Petroleum Corp. And then all of the tire business for all of the companies went to the Firestone Tire & Rubber Co.

Mr. McHUGH. Mr. Dixon, have the National City Lines been acquiring buses from other bus manufacturers previous to the time that interested the General Motors Corp. in this plan?

Mr. DIXON. Oh, yes. The local bus systems which were thus acquired through the means and methods that I have just described in many instances were being supplied with buses that were competitive to the General Motors products, such as Twin Coach and some other companies that furnished at that time that type of bus for local transit operations.

Senator O'MAHONEY. Who were the Fitzgerald brothers?

Mr. DIXON. Well, Senator, all I can tell you about the Fitzgerald brothers is that they were the ones that conceived that idea that I have just described, of acquiring local transit companies and operating them, and sold a sufficient number of, shall we call them, investors on the idea of putting money into that company to get them started. I believe the stock sold by the National City Lines Co. in the first instance was sold to the public generally.

Senator O'MAHONEY. It is a distinguished name. Where did these gentlemen come from, from what State?

Mr. DIXON. I am sure they don't come from your State, Senator. I really can't answer that question.

Senator O'MAHONEY. I wasn't concerned about that.

Mr. McHUGH. Do you know, Mr. Dixon, where the headquarters are at the present time?

Mr. DIXON. Yes. The headquarters of National City Lines, I understand, are in New York City.

Mr. McHUGH. Are the Fitzgerald brothers presently operating the National City Lines Cos.?

Mr. DIXON. As far as I know, they are still operating the holding company and subsidiaries of that company, although there are very few subsidiaries left as such.

Mr. McHUGH. Do you want to continue with your prepared statement, Mr. Dixon?

Mr. DIXON. Prior to the bringing of the criminal and civil cases aforementioned, numerous complaints had been received by the Anti-trust Division from various suppliers of buses, petroleum products, and tires to the effect that they had either lost business which they had theretofore enjoyed with the National City Lines operating companies, or had found it impossible to sell the local transit systems con-

trolled and operated by the National City Lines, Inc., or its subsidiaries, because of the apparent closure of those markets to their products after National City Lines, Inc., acquired control of the local transit systems to which they had theretofore sold or were endeavoring to sell their products. As a result of these complaints and a grand jury investigation by the Government as to the reason for the apparent closure of such markets to competition, the grand jury, sitting in the southern district, central division, of California, returned an indictment on April 9, 1947, charging the National City Lines, Inc., and several other companies, including General Motors Corp., who were supplying the local transit systems controlled by National City Lines, Inc., with buses, tires and petroleum products, with a violation of sections 1 and 2 of the Sherman Act. Mr. H. C. Grossman, assistant secretary of General Motors, was named an individual defendant in the indictment.

Mr. McHUGH. Did this case involve only what is known as the city or urban type bus, Mr. Dixon?

Mr. Dixon. Yes; the bus involved in this case was that which is used by local transit systems in providing transportation facilities within the area in which they have an operating franchise. It does not involve the so-called intercity type of bus of the Greyhound type that is perhaps more familiar generally to the public.

The grand jury charges in count 1 of the indictment that, beginning on or about January 1, 1937, the defendants named therein, including General Motors, had engaged in a combination and conspiracy to eliminate and exclude all competition in the sale of motor buses, petroleum products, tires, and tubes to the local transportation companies then or thereafter owned or controlled by National City Lines, Inc., or any of its subsidiaries. Count 2 of the indictment charged the defendants, including General Motors, with having knowingly, wilfully, and unlawfully combined and conspired to monopolize that part of the interstate trade and commerce of the United States that consisted of the sale of motor buses, petroleum products, tires, and tubes used by local transportation systems in those cities in which National City Lines, Inc. owned, controlled, or might thereafter acquire a substantial financial interest.

In that connection I might digress for a moment to say that after this combination got into operation, they really began to expand. I think just about the same time this indictment was returned, National City Lines, through one of its subsidiaries, had acquired the control of the key transportation system operating in the Oakland and San Francisco Bay area, and it had also become substantially interested in the transit operations in St. Louis and Baltimore.

Mr. McHUGH. Mr. Dixon, at the time that this case was filed, was the National City Lines, Inc., the largest single transit system in the United States?

Mr. Dixon. Well, I would say this: It is perhaps the largest holding company controlling and operating local transit systems in the United States. I don't know of any comparable corporation or group that operates in the same manner on a national basis.

The grand jury particularized the conspiracy charged by alleging that General Motors and the other supplier-defendants furnished money and capital to National City Lines, Inc., and its subsidiaries, which money and capital was to be utilized by National City Lines,

Inc., and its subsidiaries to purchase or secure control of local transit systems located in the various cities of the United States. In return, National City Lines, Inc., and its controlled local transportation companies agreed not to renew any of their then-existing contracts to purchase buses, tires, tubes, and petroleum products with companies other than the named supplier-defendants without their consent, or to dispose of any interest in any operating company without requiring the party acquiring the operating company to assume the obligation of continuing to purchase its requirements from the supplier-defendants, including General Motors. The grand jury also charged that National City Lines, Inc., and its local controlled transportation companies would not change or alter the equipment then being used by them, or purchase new equipment so as not to be able to use the products of the defendant-suppliers.

The indictment alleged that the total amounts furnished by the supplier-defendants to National City Lines, Inc., for such purposes exceed \$9 million, of which General Motors Corp. furnished over \$3 million, and that the total sales of motor buses by General Motors to the National City Lines, Inc., operating companies for the years 1936 to 1946, inclusive, exceeded \$25 million. All of the supplier-defendants, including General Motors, were to receive stock in National City Lines, Inc., or its operating companies for the money made available.

Under the conspiracy charged, General Motors was to furnish approximately 85 percent of all the motorbuses required by National City Lines, Inc., and its operating companies as of August 2, 1939. General Motors and Mack Manufacturing Corp. were to share equally in 85 percent of all new motorbus business of any of the National City Lines' operating companies, thereafter acquired. The remaining 15 percent was reserved for emergency purchases or for disposition as agreed upon by General Motors and Mack Manufacturing Corp.

The indictment thus charged, among other things, that the nationwide market for motorbuses which might be required by any of National City Lines' operating companies had by agreement been allocated and divided between General Motors and Mack in the percentages before referred to. This to the exclusion of all competition from the manufacturers of other buses which might be utilized by the local operating companies then controlled by National City Lines, Inc., or which it might thereafter control or secure a substantial financial interest in by reason of the money made available to it by General Motors and the other conspiring suppliers.

Mr. McHUGH. Mr. Dixon, can you tell us when the arrangements between National City Lines and General Motors were first entered into?

Mr. DIXON. The arrangements charged here in the indictment were entered into in the year 1938 insofar as General Motors is concerned. Some of the other companies that were indicted came into the combination a little later than that.

But the Pacific City Lines Co., which was one of the big acquisitions in the west coast area, was formed in 1938, and at that time General Motors, Standard Oil of California, and I believe Firestone, were the only suppliers in the initial stages of that incorporation and enterprises that purchased any stock.

Mr. McHUGH. Did these supplier-defendants then enter into separate contracts with the various National City Lines subsidiaries?

Mr. DIXON. Yes. The basic contracts which were introduced in evidence imposed an obligation on National City Lines, Inc., to cause any of its subsidiaries which it then owned or controlled or might thereafter acquire to enter into contracts with the suppliers named in the indictment.

As I said, these two other corporations, Pacific Lines, Inc., and American City Lines, Inc., both of which were formed at the times I have mentioned through National City Lines, Inc., to which the different suppliers contributed; in other words, the Mack Manufacturing Co., for example, did not contribute anything to the American City Lines so-called investment or enterprise. But that is another story, unless you want us to go into it at this time, the reason for it.

Mr. McHUGH. Not at this point. **Mr. Dixon,** in the event the National City Lines disposed of any of its operating companies, was it obliged to require the persons assuming this interest to also assume the obligations under this contract, to purchase from these suppliers?

Mr. DIXON. Yes; that was part of the basic or underlying contract, this so-called "investment" type of contract which was entered into at the time the money was made available to the National City Lines, Inc., and the companies that I have just mentioned, the Pacific City Lines and the American City Lines.

Mr. McHUGH. What type of stock, **Mr. Dixon,** did the General Motors Corp. acquire in any of these subsidiaries of National City Lines?

Mr. DIXON. Well, it was generally preferred stock which was callable at par, \$50, and in many instances some common stock. But the preferred stock investments were ultimately called in practically all of the companies that I have mentioned where the suppliers made this capital available for the purposes I have indicated.

Mr. McHUGH. Did any of these supplier-defendants or any combination of them ever acquire a controlling interest in any of these National City Lines companies?

Mr. DIXON. Well, yes, there was this Pacific City Lines transaction that I have mentioned which is quite involved, but very interesting to this extent: that in its initial phases there were several other individuals who put capital into that company when the operating lines which were then being operated by the Southern Pacific Co. were sold to Pacific City Lines.

Including among those, as I recall it, was a subsidiary or at least a company in which some of the Greyhound officials were purportedly interested, who took 35½ percent of the stock, 37½ percent I believe it was, and National City Lines took 37½ percent of the stock of Pacific City Lines, and the balance was taken by the three suppliers, Standard Oil of California, General Motors, and Firestone Tire & Rubber Co.

The total investment at the time of the incorporation and subsequent to the incorporation of Pacific City Lines was in excess of \$2 million, of which General Motors put in more than \$800,000, Standard of California more than \$800,000, Firestone in excess of \$250,000, and the Mack Manufacturing Co. put \$300,000 into that company in 1940, but it subsequently disposed of its interest to General Motors, Firestone,

and Standard Oil of California in 1942, I believe it was, when it apparently wasn't getting any business out of this so-called investment.

Mr. McHUGH. Mr. Dixon, do you know when and what the circumstances were under which the General Motors Co. got into the bus manufacturing business?

Mr. DIXON. I am not personally familiar with that except through knowledge which I have got through the case.

It wasn't important to the determination of this case, but it was my understanding that General Motors became interested in the manufacture of buses in the late twenties when they made a substantial stock investment in the Yellow Truck & Coach, that they gradually increased that investment or stock control until they had enough of it to apparently decide, in 1943, to merge that corporation in with the General Motors Corp. So, in 1943, I believe it was, all of the assets of Yellow Truck & Coach were transferred to the General Motors Corp.

Mr. McHUGH. Do you know, Mr. Dixon, whether the National City Lines contracts were with the General Motors Corp. or were they with Yellow Truck & Coach?

Mr. DIXON. These contracts in their inception were with the Yellow Truck & Coach Co., which was at that time a controlled subsidiary of General Motors.

The contracts, however, were naturally assigned to General Motors in 1943, when all of the assets of Yellow Truck & Coach were transferred to General Motors, and the Yellow Truck & Coach became merely a holding or a shell corporation which was ultimately dissolved.

The criminal, as well as the civil case, was naturally vigorously opposed by all defendants. The criminal case was transferred by the California district court to Chicago for trial on August 14, 1947, over the vigorous opposition of the Government. The transfer was made by the court on the ground that the case could be more conveniently tried in Chicago. Following the transfer of the criminal case to Chicago, the California district court dismissed the civil complaint on the grounds of forum non conveniens, or for substantially the same reason. The ruling in the civil case was appealed to the Supreme Court by the Government. The Supreme Court reversed the dismissal order of the district court and remanded the civil case to the district court for further proceedings. In the meantime, section 1404 (a) of the Judicial Code became effective. This section granted a district court the right in the exercise of its discretion to transfer a civil case to another jurisdiction on grounds comparable to those urged by the defendants in the criminal case. The district court, on motion of the defendants, accordingly granted their motion to transfer the civil case to the district court at Chicago, which transfer was thereafter effected when the Supreme Court denied the application of the Government on May 31, 1949, to review the order of transfer issued by the district court in the civil case.

The criminal and civil cases accordingly found their way to the district court at Chicago, where they were to be ultimately tried and disposed of. While acquitted of the charge of violating section 1 of the Sherman Antitrust Act in the criminal case, the defendants were all found guilty on March 11, 1949, after a jury trial of violating sec-

tion 2 of the Sherman Act. The Court of Appeals for the Seventh Circuit unanimously affirmed this conviction on January 3, 1951. The Supreme Court denied the defendants petition for certiorari on April 3, 1951, thus bringing the criminal case to a final close. Various proceedings thereafter followed in the civil case. The district judge finally rendered an opinion in the civil case on September 15, 1955, which calls for a final judgment which should bring the trial of the civil case to an end in the district court.

In view of the fact that the district court of California transferred both the criminal and civil cases to Chicago, the pressure of pending litigation in California prevented my active participation in the trial of the criminal case. It was, however, vigorously and successfully prosecuted by members of the staff of the Los Angeles office who were under my direct supervision and with whom I was constantly in contact during the trial of that case. The defendants unsuccessfully appealed their conviction in the criminal case, the court of appeals holding, among other points, that the conviction verdict on count 2 of the indictment was sustained by clear and convincing evidence. I hope the foregoing will give you some idea of the nature of the charges made against General Motors in the criminal and civil cases, as well as the extent to which these charges were vigorously and vehemently opposed without avail during a period of protracted and extended litigation.

Senator O'MAHONEY. The effect of what you are saying was that eventually both the criminal and the civil cases were transferred to Chicago. You were not able because of other commitments to participate in the trial of the criminal case. It was, however—now I am using your words on page 6—

vigorously and successfully prosecuted by members of the staff.

Mr. DIXON. As previously indicated, under the General Motors-National City Lines, Inc., contracts, General Motors was to receive 85 percent of all the motorbus business of the National City Lines operating companies owned or controlled by National City Lines as of August 2, 1939.

I might digress for a moment there to say that in connection with this Pacific City Lines deal which was instituted in 1938, there was no written contract until later because the oral understanding was, of course, that the suppliers would get all of this business. They being the incorporators of the Pacific City Lines, there was no reason for any contract at that time.

The National City Lines operating companies were, however, permitted under the contracts to purchase the remaining 15 percent dollar value of its bus requirements as secondhand equipment. Eighty-five percent of the bus business of the operating companies acquired by National City Lines, Inc., after August 2, 1939, was to be divided equally among General Motors and Mack Manufacturing Corp., with the exception, as I said, that this contract applied only to the National City Lines operating companies at that time, and it did not apply to the subsidiaries, Pacific City Lines and the subsequent company, American City Lines.

General Motors was thus to receive substantially all of the bus business of the operating companies controlled by National City Lines, Inc., at the time the General Motors-National City Lines agreements

were entered into, and was to share 42.5 percent of all the business of any new local transit companies thereafter acquired by National City Lines, Inc., with the Mack Manufacturing Corp.

The division of the bus business between General Motors and Mack before referred to did not, however, apply to some of the companies which were thereafter acquired by National City Lines, Inc., in the west coast area. General Motors was to get, and did secure, 85 percent of all the business of these companies with the privilege accorded such companies of acquiring the remaining 15 percent of their bus requirements as used equipment if they desired to do so.

This was made adequately clear in the contract between National City Lines, Inc., and Mack Manufacturing Corp., dated August 1, 1939, which provided that National would, insofar as legally possible, cause such operating companies as were thereafter formed or acquired by National, "except subsidiary corporations of Pacific City Lines, Inc.," to purchase 42.5 percent in dollar value of the new bus equipment requirements for such companies. The Pacific City Lines, Inc., was the National City Line, Inc., holding company subsidiary in the west coast area. The bus supply contracts entered into between General Motors and National City Lines, Inc., were to run for a minimum period of 10 years and were extended from their operation date for additional periods of time with some of the agreements being extended to January 1, 1953.

Mr. McHUGH. Why wasn't Mack permitted to participate in the City Lines contract?

Mr. DIXON. I can't answer that except to say that they apparently got no substantial amount certainly of business in the companies controlled by Pacific City Lines and they subsequently sold their stock interest in that company to General Motors and the other two suppliers that I have mentioned.

If it is of interest at this time in connection with Mack, I think the decision of the court just published or just released by the district court in Chicago points out that in the last 7 years of this contract which Mack Manufacturing entered into for the National City Lines Co. itself, they secured less than—I think it was about \$875,000 only of business during the last 7 years that contract was in effect.

Mr. McHUGH. And the contracts provided that they were to get 42½ percent of the business of these after acquired companies?

Mr. DIXON. That is correct.

At the time the contracts before referred to were entered into between National City Lines, Inc., and General Motors, the operating companies of National City Lines, Inc., were securing buses from several suppliers. These suppliers were naturally foreclosed from furnishing any further equipment to such companies after these contracts became effective. Representatives of competing suppliers indicated during the trial of the criminal case that they could not sell competing buses to the operating lines controlled by National City Lines, Inc. The president of that company, that is, National City Lines, is reported to have told one competitive bus supplier who had demonstrated its product to the Los Angeles Transit Lines: "Well, I don't think there is any point in our operating your buses * * * you know our setup with General Motors, and they are probably going to build 50 or 55 passenger buses; and if they build them, we will prob-

ably have to buy them. I think your bus as good or better than any other bus, but with this tieup we have, it is just out of the question. You just might as well take your bus to some other property with whom you can probably do some business."

The extent to which General Motors controlled the bus business of the local transit systems of National City Lines, Inc., is evident from a letter written by the president of the Pacific City Lines, Inc., to General Motors. This National City Lines' subsidiary found it necessary, due to the inability of General Motors to furnish its requirements of buses during the war, to secure buses from other sources. The buses secured from other sources exceeded the 15 percent which it was authorized under the contract to acquire from sources other than General Motors. The president accordingly suggested that General Motors acknowledge the necessity for such purchases and that this variation in the contract be made up to General Motors after the close of the war by 100 percent purchases until the contract amount is fulfilled (R. 1771). General Motors made it clear in its reply that it expected Pacific City Lines, Inc., to first contact it to find out whether General Motors could furnish the buses required by that company before it looked elsewhere for its needs. The General Motors reply stated:

We suggest, before you make any additional outside purchases, that you first contact us to find out whether or not we are in a position to supply your needs (R. 1772).

The prices which the operating——

Senator O'MAHONEY. You said above:

The president——

meaning the president of——

Mr. DIXON. Of the Pacific City Lines.

Senator O'MAHONEY. Of the Pacific City Lines——

accordingly suggested that General Motors acknowledge the necessity for such purposes——

Mr. DIXON. For such purchases.

Senator O'MAHONEY (continuing):

for such purchases and that this variation in the contract be made up to General Motors after the close of the war by 100 percent purchases until the contract amount is fulfilled.

Do I understand from the sentences which follow that General Motors made no acknowledgment of the necessity for purchases outside of the percentage?

Mr. DIXON. They did acknowledge the necessity of the purchases, Senator, and of the fact that they could not supply this need of the Pacific City Lines insofar as buses were concerned at the time the buses were required by that company.

They made it clear, however, by this letter in reply to the inquiry from Pacific City Lines that they approved these purchases in excess of 15 percent; that if they ever felt it necessary in the future to secure buses on an emergency or any other basis from any other source, that they first contact General Motors before they made any such purchases because the contract clearly gave General Motors the right to 85 percent of all of the bus requirements of this company, and the 15 percent remaining was merely inserted, and intended to apply to purchases of used buses.

In the operations of the National City Lines companies, one of the techniques and procedures which were resorted to was to frequently sell these buses from one subsidiary to another, so that that was the reason for this 15 percent provision, because those buses were obviously used buses.

Senator O'MAHONEY. But I understand then that General Motors made no issue of the fact that prior to the time the president of the Pacific Lines made the suggestion, to which you referred, it had exceeded the 15 percent, but merely responded that in the future, before any purchases above the 15 percent were to be made from other sources, application must first be made to General Motors.

Mr. DIXON. That is true, Senator. But I think it is also my recollection at this time—I will have to consult the record on that point—that they went along with the suggestion of Pacific City Lines that this deficiency be made up in establishing the quota or any question about whether they were complying with the contract requirements.

Senator O'MAHONEY. In other words, after the close of the war they make up the deficiency?

Mr. DIXON. They wanted the difference; that is correct.

Senator O'MAHONEY. All right.

Mr. DIXON. The prices which the operating companies were to pay General Motors for the buses purchased from it were supposed to be competitive with other bus supplies. In fact, the president of National City Lines, Inc., testified during the trial of the criminal case that it was generally understood that the buses which were purchased by the National City Lines, Inc., operating companies were to be bought at competitive prices. He admitted on cross-examination, however, that the operating companies did not compare prices with other suppliers in making such purchases.

Mr. McHUGH. Mr. Dixon, in this connection, what recourse did the National City Line operating companies have even if it could be shown that General Motors' prices were too high as long as the contract obligated them to purchase 85 percent of their requirements from General Motors?

Mr. DIXON. Well, I would say the answer to that is almost obvious; they had no recourse because they were bound to comply with the provisions of the contract imposed upon them as a subsidiary company by reason of the basic contract between General Motors and National City Lines, Inc.

Mr. McHUGH. So in substance would you say the provision concerning the requirements in this percentage obliged them to buy these requirements from General Motors almost irrespective of competitive prices?

Mr. DIXON. Oh, definitely; I would say that was the situation generally with reference to the purchases.

General Motors thus acquired substantially all of the bus business of the operating companies of National City Lines, Inc., by making so-called stock "investments" in National City Lines, Inc., or subsidiary companies which were formed pursuant to agreements between National City Lines, Inc., and the supplier defendants, including General Motors. General Motors as well as the other suppliers, usually secured preferred stock in the National City Lines, Inc., subsidiary companies when they made capital available to National City

Lines, Inc., to acquire new local transit systems. The suppliers who made these so-called "investments" themselves apparently recognized the obvious fact that they were buying the stock only as part of a larger deal which gave them the business of the operating companies (R. 1234). As the representative of one of the defendants indicated in discussing the deal with one of the suppliers:

We are all in the same boat and we want to do what is the wise and safe thing under the circumstances (R. 1236).

The proceeds of the stock purchased by the suppliers was used in the further purchase of properties, all of which was to greatly increase the motor-coach requirements.

If I might digress there for a moment, it was clear that it was the policy of the Fitzgerald Bros. to eliminate the streetcar and to establish motorbus systems of transportation whenever they went in and took over the local transit systems, and that is the reason for the previous statement.

One of the supplier companies purchasing the stock appeared to question the "investment" nature of the transaction, for it indicated that it had put the stock which it was acquiring in the name of two of its employees who were acting as nominees.

If I might digress there for a moment, too, when time is available and you go into the transactions under which the Los Angeles Transit System was acquired, you will find that the Standard Oil Company of California committed itself to make \$1 million available by oral agreement, and the stock was taken in the name of a subsidiary company—this is all part of the record—so that it would not appear of record in the name of the Standard Oil Company of California.

Assistance was given to the American City Lines, which was the company which acquired the control of Los Angeles Transit System by the Standard Oil of California lending its assistance in making a \$5 million loan available from the Bank of America to complete that purchase.

The so-called stock investments of General Motors in the operating companies also placed it in a position where it and the other supplier defendants were able to and did assume the active management of some of the companies for temporary periods (exhibit 149, R. 1633-1637).

It would unduly extend this statement to further detail the innumerable transactions between General Motors and National City Lines, Inc., concerning its so-called "investments" in the National City Lines companies.

The opinion of the court of appeals, which affirmed the guilty verdict in the criminal case, found the evidence adequate and sufficient within the requirements of the criminal law to sustain the conviction of General Motors and the other defendants named in the indictment. The affirming of the convictions and the refusal of the Supreme Court to review the ruling of the court of appeals effectively ended the criminal case.

As this committee well knows, the purpose of the Government's civil suit in an antitrust proceeding is to secure effective relief in the public interest against illegal practices alleged in the Government's complaint. After the affirmance of the conviction of the defendants in the criminal case, some of the defendant-suppliers, including Gen-

eral Motors, disposed of their so-called investments in National City Lines, Inc., and its operating companies, in an apparent effort to make the issues in the civil case moot. Some of the requirements contracts were also abandoned or canceled. Others expired through the lapse of time during the protracted and extended litigation. National City Lines, Inc., entered into a consent decree with the Government on December 14, 1954, in which it agreed to do its best to cancel the exclusive supply contracts then outstanding, and to request bids under certain conditions when new supplies and equipment were required by its operating companies.

Senator O'MAHONEY. What is the meaning of the phrase "to do its best to cancel"?

Mr. DIXON. Well, that is a hard question to answer, Senator.

Senator O'MAHONEY. Were these contracts not invalid?

Mr. DIXON. Yes, Senator, these contracts were obviously illegal; and the court so held in its decision, and in the decision which it rendered on September 19, 1955, it ordered canceled the only remaining contracts then still in effect which, while I was not with the Government at that time and cannot speak with reference to what the facts were, it is my understanding that the Standard Oil of California petroleum supply contract to the Los Angeles City Lines and the various other companies was still in effect, and the Firestone Tire & Rubber Co. contract I believe, was also; but I think all of the other contracts had lapsed, you might say, rather than being canceled.

Mr. McHUGH. Mr. Dixon, excuse me, are you saying those contracts were in effect at the time of the trial of the civil case even after the entry of the consent judgment against National City Lines?

Mr. DIXON. These contracts I have just described I believe, according to the opinion of the court released on September 19, 1955, were still in effect at that time.

Even after the conviction in the criminal case, I think the record shows that some of these contracts were extended, even to digress for a moment, the initial contract, Senator, with the supplier, was for a minimum period of 10 years; in other words, this market for these products was closed to all competition for a period of at least 10 years under these contracts.

The contracts also provided for their renewal and extension. I think one of the petroleum supply contracts in its initial execution was for a period of 15 years.

But these contracts, even when they expired, and they were entered into in the first instance in 1939, that would mean that the 10-year period would end in 1949, and by that time the criminal case was already on the docket; the General Motors contract on buses, for example, was extended by agreement; the Firestone contract was extended; the Standard Oil Co. of California oil contract was extended.

This is all a matter of record; so that after the determination of the criminal case on appeal, the Government went in in the civil case and filed a motion for summary judgment on the theory that the criminal case had determined the illegality of the practices alleged in the civil complaint.

Senator O'MAHONEY. Are we to understand that after the judgment in the lower court from which the defendants appealed, the defendants nevertheless continued to carry out the contracts which had been, in

effect, held to be invalid and illegal because of a violation of the Sherman Antitrust Law?

Mr. DIXON. I think your statement is substantially correct, Senator, to this extent: That the court had not yet in the civil case had an opportunity to rule—

Senator O'MAHONEY. I understand that.

Mr. DIXON (continuing). To rule upon the illegality of these contracts, and it only did so on September 19, 1955

Senator O'MAHONEY. In this civil case. But in the criminal case it had been determined?

Mr. DIXON. It had been determined.

Senator O'MAHONEY. Determined.

Mr. DIXON. That is correct.

Senator O'MAHONEY. And the contracts under the criminal verdict were invalid—

Mr. DIXON. That is right.

Senator O'MAHONEY (continuing). A violation of law, violation of the antitrust law?

Mr. DIXON. Correct.

Senator O'MAHONEY. And yet they were not effective?

Mr. DIXON. The criminal case, in other words, Senator, did not operate per se to cancel the illegal contracts between General Motors and the National City Lines, and between the other suppliers and National City Lines. Is that your question?

Senator O'MAHONEY. Yes, that is the question.

Mr. DIXON. So the Government was required, you see, to proceed in the civil case to have those contracts declared illegal, and to endeavor—

Senator O'MAHONEY. You see the point, Mr. Dixon, is this: That you are a lawyer, you sat in this case, and other lawyers who are familiar with the antitrust law understand perfectly.

But the lay reader does not understand, and that is why I want you to put it into this record in terms that are understandable by the lay reader of what the gap in the antitrust law is which makes a criminal verdict ineffective to enforce itself.

Mr. DIXON. Yes, Senator, I see your question and I understand it.

The purpose of the criminal suit against the supplier defendants and National City Lines, Inc., was to establish the criminal illegality under the criminal section of the Sherman Act, of the acts which the defendants were alleged to commit, to have committed, and which the jury found that they had committed.

Senator O'MAHONEY. What was the punishment?

Mr. DIXON. Well, I blush, Senator, to answer that question.

The corporations secured the maximum fine of \$5,000, which is the maximum penalty imposed, as you know, under the Sherman Act, at that time.

Congress has since raised it to \$50,000, but at that time, it was \$5,000.

The individual defendants, all of whom were convicted, and they were the treasurer of the Standard Oil Company of California, the assistant secretary of General Motors, and various other officials of the other corporate defendants, when the court go around to imposing sentence on the individual defendants, he very quickly, and as part of his sentence, fined them the magnanimous amount of \$1 each.

So that the fine imposed on the individual defendants in this case was hardly the amount that anyone would be fined for a very minor traffic violation.

The reason, apparently, why the court did that—that the court had in mind was that in imposing that very nominal fine, it was that he appeared to feel—and I stress this because I naturally do not purport to speak for what the judge did—that this is in the nature of an economic crime and, therefore, it is not in the same category of another type of crime. It might be for that reason the sentence imposed was of a nominal amount.

In enforcing the antitrust laws——

Senator O'MAHONEY. Well, until, as a Nation, we begin to realize that economic crimes of the magnitude described in your testimony this morning are recognized for what they are, as crimes that affect the livelihood of unnumbered persons, families, homes, and communities, it will be very difficult for us to do economic justice in this country and in the world.

Mr. DIXON. I think you are——

Senator O'MAHONEY. I think it was the recognition of this fact that made this Congress increase that penalty. It was not sufficiently increased, in my judgment, but it was increased, and I am moved to make another observation: That the court might have had in mind that some of these officers who were named as defendants were carrying out plans that were imposed upon them by higher executives whom they could not disobey except upon pain of losing their jobs.

Mr. DIXON. If I may comment upon your last remark, Senator, I think that is one of the big problems of antitrust enforcement.

It is difficult in a large corporation, in particular, to determine where the responsibility for these acts actually should be placed, and that was always the problem in any antitrust criminal proceeding.

It is almost a gesture, nothing more, to indict a corporation without indicting some of the officials of that corporation, because a corporation cannot be put in jail. There is no personal stigma attached to it, and the maximum punishment was a \$5,000 fine at that time, now \$50,000, which some have referred to as a license to violate the law.

Senator O'MAHONEY. Would you see any objection to an amendment of the antitrust law which would make it mandatory upon the court, upon finding a verdict of guilty, to impose the same fine upon the individuals concerned as upon the corporations, or would such a law make it more difficult to secure convictions?

Mr. DIXON. No; I do not think it would, Senator, because the jury are usually instructed, as you probably know, that the matter of sentence is not a matter for the jury to determine in considering the guilt or innocence of the individual defendants.

But it would certainly, perhaps, act as a little stronger deterrent, shall we say, on the part of some individual officials if they felt that they were to have that fine imposed that was imposed upon the corporation, although I venture the suggestion that in all instances where any fine is imposed that it is paid by the corporation rather than the individual against whom the fine was assessed.

Senator O'MAHONEY. Well, that would also suggest an effective means of making the individual pay the fine by amending the law to the effect that any corporation officials who used corporate funds

to pay a fine levied in any criminal case against an officer or an employee of the Government should be trebly punished for that offense, or some similar provision.

Mr. DIXON. Well, that would certainly tighten up and give more force to the sanctions that Congress, I am sure, intended to put back of the enforcement of the antitrust laws.

Senator O'MAHONEY. In the 20 years in which I have been studying this problem in the Senate, I have yet to find any executive of any great corporation do anything but proclaim his belief in the antitrust law, "antitrust laws should be maintained," and then they go on to defend free enterprise; but the laws are ineffective.

I am sorry to have interrupted you.

Mr. DIXON. All right, Senator.

Mr. McHUGH. Did the conviction in the criminal case constitute a finding that the contracts entered into in and of themselves were illegal, or was it merely a finding that there was an illegal conspiracy among these supplier defendants, the National City Lines, to monopolize this trade, and contracts were among the devices employed?

Mr. DIXON. The decision in the criminal case operated to adjudicate, as a matter of law, the charges made by the Government in the civil case that section 2 of the Sherman Act had been violated by all of the defendants.

That would indicate clearly that, to answer your question, the next step would be, as it always is in a civil case, what relief is the Government entitled to, the illegality of the acts having been determined.

Now, the question of relief, of course, is where you have to consider what the situation is at the time the relief is requested.

The court found in the decision I have just mentioned that was released on September 19—and I hardly see how he could have done otherwise—that any contracts involved in the criminal case or the civil case that were comparable to the same charge, that were part of this combination and conspiracy, were necessarily illegal and, therefore, had to be canceled as being in violation of the antitrust law, and he so ordered in his opinion of September 19, 1955.

Mr. McHUGH. Then the conviction in the criminal case did not constitute a specific finding that the contracts were illegal; and is that the reason why these contracts were perpetuated beyond that point, making necessary the filing of a civil case?

Mr. DIXON. Well, if I may venture this comment, I am certain that the lawyers for all of the defendant companies in the civil case were aware of the effect of the finding and the judgment in the criminal case, but they also knew that that finding did not operate per se or automatically to cancel these contracts.

Therefore, the position of some of the suppliers that I have mentioned was, "We won't cancel them. We will wait until the court forces cancellation."

That is why National City Lines entered into the consent decree; and the decree provided, Senator, as you inquired into a few minutes ago, that they should use their best efforts to get those contracts canceled.

But only the court can order their cancellation in the civil case. They are not canceled per se as the result of the adjudication in the criminal case.

Mr. McHUGH. Mr. Dixon, in the consent judgment that was entered against National City Lines there were no specific contracts that were ordered canceled in their terms?

Mr. DIXON. That is correct. The court would be without jurisdiction, for example, to cancel a National City Lines supply contract of the type we are discussing here between National City Lines, Inc., and, say, Standard Oil of California, with whom they had this contract, or with General Motors, or with Firestone Tire & Rubber Co., or with the Phillips Petroleum Corp.

The decree to that extent did not mean very much, Senator, again answering your question.

Senator O'MAHONEY. I know. But that is a strong indication to a Congress which is convinced that the antitrust laws should be strengthened that gaps like that should be plugged without much delay.

You have on pages 7 and 8 told the story of the reported conversation between the president of the National City Lines, Inc., with a competitive bus supplier, and this you put in quotes:

Well, I don't think there is any point in our operating your buses. * * * You know our setup with General Motors, and they are probably going to build 50- or 55-passenger buses; and if they build them, we will probably have to buy them. I think your bus is as good or better than any other bus, but with this tieup we have, it is just out of the question. You just might as well take your bus to some other property with whom you can probably do some business.

Was that typical?

Mr. DIXON. I would say without question, Senator, that that is typical, and it could be amplified many times.

Senator O'MAHONEY. Well, it means, then, that if it is typical this transit-line official who made this statement was saying that a better bus could not be purchased by his line because of the illegal contract, the criminally illegal conspiracy, in which General Motors had participated to force the purchase of the General Motors buses.

Mr. DIXON. That is correct.

Senator O'MAHONEY. I think that is a matter to which all who believe in local free enterprise or competitive enterprise had better take notice.

Mr. DIXON. I join a hundred percent in voicing the same sentiment, Senator, after endeavoring to enforce the antitrust laws for a period of 10 years.

Do you want the rest of the statement?

Senator O'MAHONEY. Oh, yes.

Mr. DIXON. According to a decision rendered on September 19, 1955, the district court in Chicago in the civil case, General Motors now holds no "investment" in, and has no requirements contracts with, any local transit company in the National City Lines system.

While I have no knowledge of the present supply situation of the National City Lines operating companies, I venture the suggestion that the greater part of all new bus equipment acquired by such companies will probably continue to be General Motors equipment, even under any bidding procedure which may be applicable to the purchases of buses in the consent decree before referred to. This for the reason that I have failed to notice any competing bus equipment on the streets of my home city, Pasadena, or that fast-growing metropolis of the West—Los Angeles—where both local transit systems are still controlled by National City Lines, Inc.

Mr. McHUGH. Mr. Dixon, criminal suit was filed in 1947 and the convictions were obtained in 1949, I believe you stated?

Mr. DIXON. That is correct.

Mr. McHUGH. Why was it that the civil suit then was not disposed of until 1955?

Mr. DIXON. Well, the Government and the defendants and the court made it necessary or required the criminal case to proceed to trial first, ahead of the civil case.

Therefore, the civil case was, in a sense, off docket, until the criminal case was disposed of.

The Government had no objection to that proceeding even though the burden of proof required of it in the criminal case is greater than that required of it in the civil case; because of the law which would make a guilty verdict or judgment in the criminal case determinative of the same issues in the civil case, so that the Government would not have to try the same issue twice, in other words, the Government could try the criminal case and lose that case, and then proceed to try the civil case and win it, without prejudice to its loss of the criminal case.

However, if it won the criminal case, then it had the advantage of winning that case and presumably effectively and quickly disposing of the civil case.

However, our efforts to get action on the—that is, the Government's efforts to get action, quick action, determinative of the civil case by a motion for summary judgment—was not very successful due to the apparently clogged docket in the district court at Chicago at that time, and the fact that the Government as well as every other litigant in a civil case has to take its place in line and wait for a judge who can hear its case.

But every effort was made to press it for adjudication by the methods that I have just indicated.

The record speaks for itself in that respect. It was only this year in September that the matter was finally disposed of, and the final order is not even in the civil case as of now, as far as I know. Does that answer your question?

Mr. McHUGH. Yes.

Were there negotiations for settlement then proceeding between 1949 and 1955, as far as the entry of a consent judgment is concerned?

Mr. DIXON. Well, yes; there were some negotiations instituted by National City Lines, Inc. to dispose of the civil case, and those negotiations ultimately resulted in the consent decree which it entered into with the Government in 1954, I believe. You have the date, December 14, 1954.

However, the other defendants in the case refused apparently to negotiate or enter into any consent decree, claiming there was nothing which could be accomplished by such a decree since they had sold their stock and had—the contracts which the Government complained of were no longer in effect.

In other words, their defense to the Government's effort to secure a determination of the civil case was that there is nothing now for the court to decide, because everything which the Government seeks in the civil case had been accomplished, namely, the stock had been sold, the contracts are either no longer in effect or have been canceled and, therefore, the whole issue is what the lawyer calls moot, and if that is

true then, of course, the court cannot enter any injunctive order in this type of case.

Mr. McHUGH. Mr. Dixon, what type of relief was the Government seeking against these supplier-defendants besides the cancellation of the contracts and obliging them to dispose of their stock interests?

Mr. Dixon. Well, the Government was requesting the court to order the defendant—I mean the National City Lines—to purchase equipment in the future by competitive bidding, that being the only way in which the Government felt that this market, which had been foreclosed to competition for so many years, could be, shall we say, reopened to competition.

That was in a limited sense or in a sense granted to the Government in the consent decree.

The other relief requested dealt with the cancellation of the contracts, the divestiture of the stock interests, general injunctive prohibitions against the resumption of the practices complained of, and the court said that General Motors had testified it had no intention of entering into any contracts like this in the future, and therefore, there was no reason to make any order against General Motors, and that since the other contracts had lapsed, there was nothing to cancel, except the two contracts I had mentioned some time ago, namely, the one apparently against or to which Standard Oil of California and the Firestone Tire & Rubber Co. were parties.

So that in its opinion, which it rendered on September 19 of this year, it ordered those contracts canceled if they were still in effect.

Mr. McHUGH. Was the General Motors contract in effect at that time.

Mr. Dixon. It was not, according to the opinion of the court that I have just referred to.

Mr. McHUGH. Mr. Dixon, do you know whether the provisions—

Senator O'MAHONEY. Was it in reality?

Mr. Dixon. That, Senator, is the \$64 question. I expect—

Senator O'MAHONEY. You ended your statement by saying in Pasadena you have seen none but General Motors buses.

Mr. Dixon. And in Los Angeles, that is true, too, Senator.

Mr. McHUGH. In the consent judgment that was entered against National City Lines, Mr. Dixon, was there any provision in their requiring National City Lines to purchase buses through a competitive bidding method?

Mr. Dixon. Well, that is rather a difficult question to answer. I would rather it be asked of someone from the consent decree section of the Department of Justice who participated in this decree.

As a lawyer, it would appear that the consent decree might possibly require it. But there are so many things which may be done under the decree with reference to specifications and so forth that, as a practical matter, I am certain that if National City Lines wanted to specify General Motors buses they, General Motors buses, would be the only ones on which any bid would be submitted.

Senator O'MAHONEY. Mr. McHugh, I suggest that you insert in the record at this point the consent decree of December 1954.

Mr. McHUGH. Senator, it will be made part of our permanent record.

(The document referred to follows:)

[¶ 67,917] **United States v. National City Lines, Inc., et al.**

In the United States District Court for the Northern District of Illinois, Eastern Division. Civil Action No. 49 C 1364. Dated December 14, 1954.

Case No. 890 in the Antitrust Division of the Department of Justice.

SHERMAN ANTITRUST ACT

Combinations and Conspiracies—Monopolies—Consent Decree—Practices Enjoined—Restrictive Agreements Between Buyer and Suppliers.—A holding company which controlled various local transportation systems was enjoined by a consent decree from (1) procuring any operating equipment on the condition that the supplier purchase stock of, or any financial interest in, the holding company, any local transportation system controlled by the company, or any other local transportation system; (2) entering into any contract with any supplier of operating equipment which restricts or limits the holding company or any local transportation system controlled by the company as to (a) areas in which such transportation companies may operate, (b) changes of operating equipment to any type, (c) types of transportation services furnished, (d) purchases of new operating equipment, except that any contract for the supply of tires and tubes may require that new buses be purchased without tires and tubes, (e) disposal of any interest in any local transportation system controlled by the holding company or acquisition of any interest in any other local transportation system; (3) entering into any contract with any supplier of operating equipment for financing the operations of the holding company, any local transportation system controlled by the company, or any other local transportation system, upon or accompanied by any agreement for the purchase or sale of operating equipment, except contracts with respect to terms of payment of price; or (4) entering into any contract with any supplier of operating equipment which is conditioned upon the procurement of other operating equipment from any other supplier.

See *Combinations and Conspiracies*, Vol. 1, ¶ 2005.595, 2005.703, 2005.833, 2005.848; *Monopolies*, Vol. 1, ¶ 2610.760; *Department of Justice Enforcement and Procedure*, Vol. 2, ¶ 8421.

Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief—Supply Contracts.—A holding company which controlled various local transportation systems consented to the entry of a decree which ordered and directed that (1) one and only one new contract for the supply of petroleum products and one and only one new contract for the supply of tires and tubes to the holding company or to local transportation systems controlled by the company shall be awarded in accordance with the requirements and procedures set forth in the decree; (2) contracts for the supply of petroleum products shall be for a period of no more than one year; and (3) contracts for the supply of tires and tubes shall be for a period of no more than three years. Another provision of the decree sets forth the procedure with respect to bids for supply contracts.

See *Department of Justice Enforcement and Procedure*, Vol. 2, ¶ 8301.50.

Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief—Bids for Supplies.—A consent decree entered against a holding company which controlled various local transportation systems, in setting forth the requirements for future contracts for the supply of operating equipment, provided that (1) a request for bids by suppliers of operating equipment shall be published in a specified trade journal within ninety days from the date of the entry of the decree, (2) the request for bids, the drawing up and issuance of specifications, the method and time of submission of bids, and the opening of bids shall not give to any supplier or prospective supplier any competitive advantage or preference over any other supplier, (3) subject to the right of the holding company, any local transportation system controlled by the company, or specified other companies to reject all bids, the contract shall be awarded to the lowest responsible bidder, and (4) all bids shall be opened at the time and place stated in the request for bids, and the names of the bidders and the prices bid shall be entered in a record which shall be available for inspection by the Department of Justice.

See *Department of Justice Enforcement and Procedure*, Vol. 2, ¶ 8301.45.

Department of Justice Enforcement and Procedure—Consent Decrees—Contingent Provision—Termination of Contracts.—A holding company which controlled various local transportation systems was ordered by a consent decree to cancel, upon the entry of a final judgment against a defendant petroleum company, specified contracts between certain of the holding company's local transportation com-

panies and the petroleum company. The holding company also was ordered to take, upon the entry of a final judgment against a defendant tire and tube company, all action within its power to have terminated certain agreements between the tire and tube company and certain of the holding company's local transportation companies.

See Department of Justice Enforcement and Procedure, Vol. 2, ¶ 8341.20.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General, and W. D. Kilgore, Jr., Earl A. Jinkinson, and Ralph M. McCareins.

For the defendants: John T. Chadwell and C. Frank Reavis for National City Lines, Inc. and Pacific City Lines, Inc.

For prior opinions of the U. S. District Court, Northern District of Illinois, Eastern Division, see 1954 Trade Cases ¶ 67,654 and 1950-1951 Trade Cases ¶ 62,875.

Final Judgment

JULIUS J. HOFFMAN, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on April 10, 1947, and all the defendants having severally appeared and filed answers to the complaint denying the substantive allegations thereof, and the defendants National City Lines, Inc., and Pacific City Lines, Inc., by their attorneys, having severally consented to the entry of this Final Judgment without admission by said defendants with respect to any issue of fact or law.

Now, therefore, no testimony or evidence having been taken herein, and the Court having entered its order herein on February 26, 1954, and upon consent of the plaintiff, United States of America, and defendants National City Lines, Inc., and Pacific City Lines, Inc., it is hereby

Ordered, adjudged and decreed, as follows :

I

[*Sherman Act*]

This Court has jurisdiction of the subject matter herein and of the parties signatory hereto. The complaint states a cause of action against the defendants signatory hereto under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, and acts amendatory thereof and supplemental thereto.

II

[*Definitions*]

As used in this Final Judgment :

(A) "National" means National City Lines, Inc., a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Chicago, Illinois ;

(B) "Pacific" means Pacific City Lines, Inc., a corporation organized under the laws of the State of Delaware and dissolved on December 31, 1947, at which time all of its assets were conveyed to and all of its liabilities were assumed by, National ;

(C) "Firestone" means The Firestone Tire and Rubber Company, a corporation organized and existing under the laws of the State of Ohio, with its principal place of business in Akron, Ohio ;

(D) "Standard" means Standard Oil Company of California, a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in San Francisco, California ;

(E) "Person" means any individual, partnership, firm, corporation, association, trustee, or any other business or legal entity ;

(F) "National Operating Company" means any operating company now controlled by National and which it continues to control and any operating company more than 50% of whose stock entitled to vote upon the election of directors is hereafter acquired by National ;

(G) "Operating company" means any person engaged in the business of providing public transit service ;

(H) "Operating equipment" means tires, tubes, motor buses, and petroleum products, or any of them used by operating companies.

III

[Applicability of Provisions]

The provisions of this Final Judgment applicable to any defendant signatory hereto shall apply to such defendant, its officers, directors, agents, servants, employees, subsidiaries, successors and assigns and to each of those persons in active concert or participation with it who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

[Contingent Cancellation of Contracts]

(A) Defendant National is ordered and directed to cancel, upon entry of a Final Judgment against Standard, each of the following contracts:

(1) Agreement between Standard and Pacific, dated May 1, 1943, as amended May 1, 1946;

(2) Agreement between Standard and Salt Lake City Lines, dated July 12, 1944, as amended May 1, 1946.

(B) National is ordered and directed to take, upon the entry of a Final Judgment against Firestone herein, all action within its power to have terminated the agreements between Firestone and Los Angeles Transit Lines and St. Louis Public Service Company for the supply of tires and tubes.

(C) National is ordered and directed to take, upon the entry of a Final Judgment against Standard herein, all action within its power to have terminated the agreement between Standard and Los Angeles Transit Lines for the supply of petroleum products.

(D) Nothing in Sections IV, VI and VII of this Final Judgment shall be construed to limit the right of Firestone to obtain performance of the obligation to purchase tires and tubes on the basis of unused mileage, or other similar provisions of the last agreements in effect prior to the entry of this judgment.

V

[Operating Equipment Supply Contracts]

Defendant National is enjoined and restrained from doing, or permitting any National operating company to do, any of the following:

(A) Procuring any operating equipment on the condition, agreement or understanding that the supplier thereof purchase capital stock of, or any financial interest in, National, any National operating company or any other operating company;

(B) Entering into any contract, agreement or understanding with any supplier of operating equipment which restricts or limits, in any manner whatsoever, National or any National operating company as to:

(1) Areas or localities in which such companies may operate;

(2) Conversions or changes of operating equipment to any type whatsoever;

(3) Types of transportation services furnished;

(4) Purchases of new operating equipment of any type whatsoever, except that any contract for the supply, service, purchase or rental of tires and tubes may require new buses be purchased without tires and tubes;

(5) Disposal of any interest in any National operating company or acquisition of any interest in any other operating company;

(C) Entering into any contract, agreement or understanding with any supplier of operating equipment for financing the operations of National, any National operating company or any other operating company, upon or accompanied by any contract, agreement or understanding for the purchase or sale of operating equipment, except contracts, agreements or understandings with respect to terms of payment or price;

(D) Entering into any contract, agreement or understanding with any supplier of operating equipment which is conditioned upon the procurement of other operating equipment from any other supplier.

VI

[New Supply Contracts]

(A) It is ordered and directed that one and only one new agreement for the supply of petroleum products and one and only one new agreement for the supply and services of tires and tubes to defendant National or to National operating companies (which operating companies are those set forth in paragraphs (B) and (C) below) shall be awarded in accordance with the requirements and procedures set forth in Sections VI and VII of this Final Judgment but as to Los Angeles Transit Lines or St. Louis Public Service Company said agreements shall be subject to the necessary action by said companies. New agreements for the supply of petroleum products to replace those presently outstanding with Standard, or for the supply and service of tires and tubes to replace those presently outstanding with Firestone, shall not be required until entry of a Final Judgment against Standard and Firestone terminating and cancelling said agreements.

(B) The agreements for the supply of petroleum products shall be for a period of no more than one year. A separate agreement may be made for the supply for said year by the companies set forth in each of the following groups of National operating companies (provided, however, that at Nationals option the companies may be divided into a larger number of groups for such purpose) :

"Group I"

Company	Location of Company
Jackson City Lines, Inc.....	Jackson, Mich.
Kalamazoo City Lines, Inc.....	Kalamazoo, Mich.
Saginaw City Lines, Inc.....	Saginaw, Mich.

"Group II"

Company	Location of Company
Aurora City Lines, Inc.....	Aurora, Ill.
Bloomington-Normal City Lines, Inc.....	Bloomington, Ill.
Burlington City Lines, Inc.....	Burlington, Ill.
Champaign-Urbana City Lines, Inc.....	Champaign, Ill.
Cedar Rapids City Lines, Inc.....	Cedar Rapids, Iowa
Danville City Lines, Inc.....	Danville, Ill.
Decatur City Lines, Inc.....	Decatur, Ill.
East St. Louis City Lines, Inc.....	East St. Louis, Ill.
Elgin City Lines, Inc.....	Elgin, Ill.
Joliet City Lines, Inc.....	Joliet, Ill.
Lincoln City Lines, Inc.....	Lincoln, Nebr.
Quincy City Lines, Inc.....	Quincy, Ill.
Terre Haute City Lines, Inc.....	Terre Haute, Ind.

"Group III"

Company	Location of Company
El Paso City Lines, Inc.....	El Paso, Texas
Tulsa City Lines, Inc.....	Tulsa, Okla.

"Group IV"

Company	Location of Company
Glendale City Lines, Inc.....	Glendale, Cal.
Long Beach City Lines, Inc.....	Long Beach, Cal.
Pasadena City Lines, Inc.....	Pasadena, Cal.
Sacramento City Lines, Inc.....	Sacramento, Cal.
San Jose City Lines, Inc.....	San Jose, Cal.
Stockton City Lines, Inc.....	Stockton, Cal.

"Group V"

Company	Location of Company
Salt Lake City Lines.....	Salt Lake City, Utah
Spokane City Lines, Inc.....	Spokane, Wash.

A separate agreement shall be made by Los Angeles Transit Lines and a separate one by St. Louis Public Service Company.

(C) The agreements for the supply and service of tires and tubes shall be for a period of no more than three years. A separate agreement may be made for the tires and tubes to be used for said period by the companies set forth in each of the following groups of National operating companies (provided, however, that at National's option the companies may be divided into a larger number of groups for such purpose) :

"Group I"

Company	Location of Company
Jackson City Lines, Inc.....	Jackson, Mich.
Kalamazoo City Lines, Inc.....	Kalamazoo, Mich.
Pontiac City Lines.....	Pontiac, Mich.
Saginaw City iLnes, Inc.....	Saginaw, Mich.

"Group II"

Company	Location of Company
Aurora City Lines, Inc.....	Aurora, Ill.
Bloomington-Normal City Lines, Inc.....	Bloomington, Ill.
Burlington City Lines, Inc.....	Burlington, Ill.
Canton City Lines, Inc.....	Canton, Ohio
Champaign-Urbana City Lines, Inc.....	Champaign, Ill.
Cedar Rapids City Lines, Inc.....	Cedar Rapids, Iowa
Danville City Lines, Inc.....	Danville, Ill.
Davenport City Lines, Inc.....	Davenport, Iowa
Decatur City Lines, Inc.....	Decatur, Ill.
East St. Louis City Lines, Inc.....	East St. Louis, Ill.
Elgin City Lines, Inc.....	Elgin, Ill.
Joliet City Lines, Inc.....	Joliet, Ill.
Lincoln City Lines, Inc.....	Lincoln, Neb.
Portsmouth City Lines.....	Portsmouth, Ohio
Quincy City Lines, Inc.....	Quincy, Ill.
Rock Island-Moline City Lines.....	Rock Island, Ill.
Terre Haute City Lines, Inc.....	Terre Haute, Ind.

"Group III"

Company	Location of Company
Beaumont City Limits.....	Beaumont, Texas
El Paso City Lines, Inc.....	El Paso, Texas
Mobile City Lines.....	Mobile, Ala.
Montgomery City Lines.....	Montgomery, Ala.
Tampa City Lines.....	Tampa, Fla.
Tulsa City Lines, Inc.....	Tulsa, Okla.

"Group IV"

Company	Location of Company
Glendale City Lines, Inc.....	Glendale, Cal.
Long Beach City Lines, Inc.....	Long Beach, Cal.
Pasadena City Lines, Inc.....	Pasadena, Cal.
Sacramento City Lines.....	Sacramento, Cal.
Salt Lake City Lines.....	Salt Lake City, Utah
San Jose City Lines, Inc.....	San Jose, Cal.
Spokane City Lines, Inc.....	Spokane, Wash.
Stockton City Lines, Inc.....	Stockton, Cal.

A separate agreement shall be made by Los Angeles Transit Lines and a separate one by St. Louis Public Service Company.

VII**[Bids]**

(A) A request for bids by suppliers shall be published once in Bus Transportation and Mass Transportation within 90 days from the date of entry of this Final Judgment except that as to those companies being supplied under contracts with Standard or Firestone, said request shall be so published within 90 days after the effective date of a Final Judgment against Standard and Firestone.

(B) The request for bids, the drawing up and issuance of specifications, the method and time submission of bids, and the opening of bids shall not give to any supplier or prospective supplier any competitive advantage or preference over any other supplier.

(C) Subject to the right of National, any National operating company, Los Angeles Transit Lines or St. Louis Public Service Company to reject all bids, the agreement shall be awarded to and made with the lowest responsible bidder. By "lowest responsible bidder" is meant (1) a company which is engaged in the business of supplying the operating equipment to be furnished under the agreement, or in performing the work or services to be covered by the agreement, and which has the financial ability, equipment, available supply of service approved operating equipment, and the reliability necessary to furnish said operating equipment, and (2) the company which will supply all of the particular operating equipment at an aggregate price which (after considering any credits or offsets to or by the operating companies) is the lowest dollar amount.

(D) All bids shall be opened at the time and place stated in the request for bids; and the names of the bidders and the prices bid shall be entered in a record which shall be available for inspection by duly authorized representatives of the Department of Justice.

VIII

[Inspection and Compliance]

For the purpose of securing compliance with this Final Judgment and for no other purpose, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted (1) access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendant relating to any matters contained in this Judgment, and (2) subject to the reasonable convenience of said defendant, and without restraint or interference from it, to interview officers or employees of said defendant, who may have counsel present, regarding any such matters, and upon such request the defendant shall submit such reports in writing to the Department of Justice with respect to any matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment. No information obtained by the means provided in this section shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

IX

[Jurisdiction Retained]

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Judgment or for the modification or termination of any of the provisions thereof, and for the purpose of the enforcement or compliance therewith and the punishment of violations thereof.

Senator O'MAHONEY. The citations are given there, are they not?

Mr. DIXON. I do not believe either of these are published decisions, Senator.

Senator O'MAHONEY. No.

Mr. DIXON. So except in the services that publish this type of reporting—

Senator O'MAHONEY. We can identify them and include what is necessary.

Mr. McHUGH. Mr. Dixon, do you think that the conviction in the criminal case and the judgment in the civil case, with which you were intimately associated, were successful in really restoring competition for the National City Lines' business?

Mr. DIXON. Well, I think anyone can answer that question better if you could come back 5 years from now with figures as to what has happened in the intervening period.

I think the likelihood is, and just again venturing an opinion, that if this committee or if the Department of Justice takes a look at this situation 5 years from now, you will probably find that National City Lines companies, if they are still operating them, will be using General Motors equipment.

Senator O'MAHONEY. Well, it is a matter of fact, and I am sure it has been your experience, that a giant corporation, whatever it be, which becomes involved in a lawsuit, either with a small business or with the Government in antitrust procedure, because of its financial strength can almost always wear the little business out, and by consistent appeals and motions, dilatory motions, of one kind or another, and appeals all the way up to the Supreme Court, can consume so much time that the effectiveness of the prohibition of the antitrust law is greatly reduced.

If my memory serves me correctly, the big packers, before they finally yielded to the decision of the Supreme Court that they were in a combination and in violation of the antitrust law, preserved the status quo for at least a decade, and in this connection it is important to remember that since the corporation is an artificial person, its personnel changes, and those who were the executives when a decree was handed down are on pension or retired when a particular case is coming to its conclusion or a new one arising, and they can apply new means and methods of thought to prolong the economic position which they have occupied to strangle small business and to conspire to monopolize trade and commerce; isn't that right?

Mr. DIXON. I certainly agree, Senator, with what you have said, that that in practice is what happens in substantially most of these cases.

In other words, the Government, in enforcing the antitrust laws, does everything, as they now stand, does everything possible to make use of the procedures that are available to remove the obstruction on commerce that is so apparent in so many of these cases and situations.

The difficulty always is, as you have just suggested—take this case or these cases, it is approximately 8 years or more from the time the indictment in the civil case was filed before there is an ultimate determination of it.

The conspiracy charge had been in effect for at least 10 years prior to the time the indictment and civil cases were filed.

The result is that for a period of 18 years in this case the market involved here has been foreclosed from substantially all competition, and in the meantime, the companies have been making the profits on the products that they have sold in this market, without any fear that they were going to lose that business from competitive suppliers.

Now, as a practical matter, the court decree may require certain things, but if you have been doing business with someone for 18 years the chances are that you are going to be a little reluctant to change to someone else unless you are forced to do so.

Senator O'MAHONEY. Well, this passage of time also illustrates, may I say to our general counsel and to the assistant counsel, why neither the Brookings Institution nor the Michigan University professors nor the vice president and general counsel, Mr. Hogan, of

General Motors have come up to volunteer a contribution to the study of the effect of big business upon the social and economic structure of the United States.

They may think that time will result in this matter being completely forgotten; that when this committee has adjourned and made its report, there will be other things. But I still hope that it will not be necessary for me to suggest to the committee that a subpoena be issued in the case of these three groups which have a good deal of knowledge about General Motors to contribute. I hope they will voluntarily contribute their knowledge, or if they have no knowledge, because the study meant nothing and was not an iron curtain hiding secret testimony, that they will come before us and tell us about it.

It is almost 4:30. Have you any more questions?

Mr. McHUGH. We are all finished, Senator.

Senator O'MAHONEY. Well, the committee will stand in recess until 10 o'clock tomorrow morning.

(Whereupon, at 4:20 p. m., the hearing was adjourned, to reconvene at 10 a. m., Wednesday, November 16, 1955.)

A STUDY OF THE ANTITRUST LAWS

WEDNESDAY, NOVEMBER 16, 1955

UNITED STATES SENATE,
SUBCOMMITTEE ON ANTITRUST AND MONOPOLY
OF THE COMMITTEE OF THE JUDICIARY,
Washington, D. C.

The subcommittee met, pursuant to recess, at 10:30 a. m., in room 424, Senate Office Building, Senator Joseph C. O'Mahoney presiding.

Present: Senator O'Mahoney (presiding).

Also present: Joseph W. Burns, chief counsel; Donald P. McHugh, assistant counsel; Joseph A. Seeley, assistant counsel; Gareth M. Neville, assistant counsel; Jesse J. Friedman, economic consultant; and Paul R. Beath, staff member.

Senator O'MAHONEY. The committee will come to order.

Mr. BURNS. The first witness today will be Mr. Frank Fageol, chairman of the Twin Coach Co., of Kent, Ohio.

Senator O'MAHONEY. Very good, sir; we are glad to welcome you.

STATEMENT OF FRANK R. FAGEOL, CHAIRMAN, BOARD OF DIRECTORS, TWIN COACH CO.

Mr. BURNS. Mr. Fageol, what is the present business of the Twin Coach Co.?

Mr. FAGEOL. Manufacturer of automotive vehicles at Kent; we manufacture engines there, and we manufacture aircraft assemblies at Buffalo.

Mr. BURNS. Is that Kent, Ohio?

Mr. FAGEOL. Kent, Ohio.

Mr. BURNS. Do you at the present time make any motor buses?

Mr. FAGEOL. No; we do not.

Mr. BURNS. Have you made them in the past?

Mr. FAGEOL. Yes.

Mr. BURNS. Will you tell us briefly your experience in the motor vehicle business from the time you first began? When did you first get into the motor vehicle business?

Mr. FAGEOL. You mean the motorbus business?

Mr. BURNS. Motor vehicle business, any type of motor vehicle.

Mr. FAGEOL. We started, my company started, manufacturing motor trucks in California in 1917.

Mr. BURNS. What was the name of that company?

Mr. FAGEOL. Fageol Motors Co.

Mr. BURNS. When did you first make buses, and what type of buses did you first make?

Mr. FAGEOL. In 1921 we introduced our first bus, which was then known as the Fageol safety coach.

Mr. BURNS. Will you just tell us briefly what the development of the bus was at that time?

Mr. FAGEOL. At that time practically all motor buses consisted of elongated touring cars, motortruck chassis, with very crude bodies in them. We designed the first all-purpose motorbus for highway use.

Senator O'MAHONEY. Were you associated with the company at that time?

Mr. FAGEOL. Yes, I organized the company and was head of it.

Senator O'MAHONEY. You have been with this company throughout its existence then?

Mr. FAGEOL. Pardon?

Senator O'MAHONEY. You have been with this company throughout its existence?

Mr. FAGEOL. That is correct.

Mr. BURNS. The company we are talking about is the Fageol Motors Co.?

Mr. FAGEOL. That is right.

Mr. BURNS. When was Twin Coach organized?

Mr. FAGEOL. Twin Coach Co. was organized in 1927.

Mr. BURNS. Now, in 1923 did you organize a business in Ohio?

Mr. FAGEOL. I organized what was then known as the Fageol Motors Co. of Ohio for the purpose of building buses for the eastern market.

Mr. BURNS. What type of buses were those?

Mr. FAGEOL. That was a new version of a bus which we called the transit type; in other words, we took a streetcar and put rubber tires on it, and so that all the car space occupied was available for passengers, and that is today the standard bus you see everywhere.

Mr. BURNS. As far as you know, was that the first time a bus of that style was manufactured?

Mr. FAGEOL. So far as I know, yes.

Mr. BURNS. Where was your plant at that time?

Mr. FAGEOL. We had the Fageol Motors Co. in California—no, I will take that back. Fageol Motors Co. of California had gone out of business by then; the plant was at Kent, Ohio.

Mr. BURNS. At that time did you make an arrangement with A. C. F. Brill?

Mr. FAGEOL. Yes.

Mr. BURNS. Will you tell us what that was?

Mr. FAGEOL. The Brill Co. of Philadelphia were manufacturing streetcars, had been for a great many years, and they saw the coming of the motorbus and wanted to get into it so we merged our Fageol Motors of Ohio with them, and also took in the Hall-Scott Motor plant at Berkeley, Calif., who were at that time building our engines.

Mr. BURNS. Did you make buses for the A. C. F. Brill Co.?

Mr. FAGEOL. The A. C. F. Brill Co. then made buses. They moved the operations from Kent, Ohio, to Detroit and Philadelphia; and our Kent plant, the one we had used, was abandoned at that time.

Mr. BURNS. Now tell us about the organization of the Twin Coach Co.

Mr. FAGEOL. In 1926 I severed my connections with the A. C. F. Brill Co. and bought out the Twin Coach, went back and bought the

plant and facilities from the A. C. F. Brill Co., and reopened to manufacture buses in Kent, Ohio.

Mr. BURNS. What type of buses did you make with Twin Coach?

Mr. FAGEOL. The transit type I just described.

Mr. BURNS. Had you previously manufactured any buses which you referred to as intercity buses?

Mr. FAGEOL. Yes. The original Fageol Safety Coach was an intercity bus, both an intercity and then later we built it as a city bus.

Mr. BURNS. Are the intercity buses of a different type than the city buses, and are they, in a sense, separate phases of the industry?

Mr. FAGEOL. They were in the early stages, but now the city bus or the transit type serves both the city and the intercity, the intercity being more luxurious, a more luxurious bus than the city type.

Mr. BURNS. At the time that you organized Twin Coach, who were the other bus companies in the industry?

Mr. FAGEOL. At that time building large size buses, such as we built, the better grade type of bus, was the General Motors Co., the A. C. F. Brill Co., the White Co., the Mack Co., and Twin Coach Co.

Mr. BURNS. Did those companies make the greater part of the volume of the business, the trucks that were made, of the transit or city type?

Mr. FAGEOL. The buses, yes. They made all the larger types, which accounted for a large percentage of them, and there were smaller companies making smaller buses, mostly.

Mr. BURNS. Now, prior to World War II, approximately what was the range of your dollar volume of sales annually?

Mr. FAGEOL. Oh, from 6 to 10 million.

Mr. BURNS. After the war, was there any change in the situation in the bus industry?

Mr. FAGEOL. Immediately following the war there was a great pent-up demand, at which time everybody's production facilities were increased, doubled, and bus production was tripled over anything that had been done theretofore. That only lasted through 1947 and part of 1948.

Mr. BURNS. During that period, approximately what volume of business did you do annually?

Mr. FAGEOL. Oh, around 25, 30 million.

Mr. BURNS. After 1947, was there any change in the nature of the demand for buses?

Mr. FAGEOL. Well, the demand for buses dropped off sharply because most companies had bought up their requirements and shortages that had accrued during the war when buses could not be made for commercial purposes.

Mr. BURNS. What factors caused this change outside of the fulfilling of the pent-up demand? Were there any other factors which caused the falling off of the bus business?

Mr. FAGEOL. Yes, the coming back of the automobile business, availability of automobiles, cut down bus riders; it has been going down ever since and is continuing down.

Mr. BURNS. What change did that make in the competitive picture in the bus industry?

Mr. FAGEOL. Well, it made this change, that the bus business was 40 percent less than the normal prewar business, approximately 40

percent; so there was not really enough business to go around, plus the fact that the General Motors' share of the business began to increase, the amount of business they were able to get.

Mr. BURNS. You supplied the committee staff with some statistics showing the sales of buses from 1924 through 1955, the first 8 months. Will you tell us the source from which you obtained this information?

Mr. FAGEOL. This information was obtained through the National Automobile Manufacturers Association, which sends out to its members the number of vehicles each company builds.

Mr. BURNS. Will you explain briefly what these groupings are and why you have them grouped the way they are on this chart?

Mr. FAGEOL. For convenience of reference, I have divided this chart into 4 groups, using General Motors as 1 group, and then using the 4 other larger manufacturers, which consisted of Mack, White, A. C. F. Brill, and Twin Coach Co., into what I call group A.

Mr. BURNS. When you say larger, you mean larger in size?

Mr. FAGEOL. Yes; and larger companies, also, generally speaking.

Mr. BURNS. And these had been the larger companies in the business from back about 1924 to 1926?

Mr. FAGEOL. That is correct.

Mr. BURNS. What are the other classifications that you have here?

Mr. FAGEOL. I have here what I call group B, which consisted of the Flexible Co., the Aerocoach Co., Beck Co., Fitzjohn Co., and the Southern Coach Co.

Mr. BURNS. Do they make the same type of bus that the General Motors and group A make?

Mr. FAGEOL. Pretty much so, except the Flexible Co.; their operations have been confined almost entirely to the urban or city type of bus.

Mr. BURNS. But their products were in competition with General Motors and group A?

Mr. FAGEOL. That is right.

Mr. BURNS. What is the group called group C?

Mr. FAGEOL. The group C consists of still smaller companies; the Beaver Co., a very small company; Marmon Herrington Co. of Indianapolis; what is called the Pony Co.; the Reo Co.; the Superior Co.—Superior Body Co.; Checker Cab-Transit Co., and a number of others smaller.

Mr. BURNS. Now, what type—

Senator O'MAHONEY. May I suggest that this chart be edited to show the location at which each of the companies mentioned in groups A, B, C, and "All others" carried on their operations?

Mr. FAGEOL. Would you like me to state that?

Senator O'MAHONEY. Can you do that now?

Mr. FAGEOL. Yes.

Senator O'MAHONEY. Well, I think that would be very good. Please do that.

Mr. FAGEOL. All right.

The Twin Coach Co. in group A was at Kent, Ohio; the Mack Co. bus plant was at Allentown, Pa.; the A. C. F. Brill Co. bus plant was at Philadelphia; the White Motor Co. plant was at Cleveland, Ohio.

In group B, the Flxible Co. are at Loudonville, Ohio; the Aero-coach Co. was at Chicago, Ill.; the Beck Co., I do not recall the town, up in Michigan somewhere, and that is also true of the Fitzjohn Co.—I think the Beck Co. is in Indiana, but I am not quite sure; the Fitzjohn Co., I believe, is in Michigan, I do not know the town; and the Southern Coach Co. is in Alabama, Evergreen, Ala.

In group C, the Beaver Co. of Beaver Falls, close to Pittsburgh; Marmon Herrington Co. are at Indianapolis, Ind.; Pony Co. was a very small operation up in Michigan some place, I do not recall the name of the town, the Reo Co. was at Lansing, Mich.; Superior Body Co. is in Ohio, and I cannot think of the name of the town; the Checker Cab Co. are in Michigan, I forget the name of the town up there they are in—Kalamazoo, I believe. The others I do not know.

In group 5 there is Crown Coach Co. located in Los Angeles, Calif.; Transicoach, I do not know where they are; General Car, I do not know where they are; and Canadian Car is in Canada, that is, the Canadian Car & Foundry in Canada.

Senator O'MAHONEY. Would you say that there were more than half a dozen States and one foreign country in which these various businesses were carried on?

Mr. FAGEOL. Yes, I would say that is correct, approximately six States.

Senator O'MAHONEY. Well, I have counted at least six, without attempting to begin at the beginning.

Mr. BURNS. The buses referred to on this chart were the intercity and the city type of bus; is that right?

Mr. FAGEOL. I believe that is correct. I am not sure that the intercities are covered in here, but I rather think they are.

I am quite sure that the last 5 years or 3 years, I should say, from 1952 through the first 8 months of 1955, do not include intercity buses. I believe the previous figures do.

Mr. BURNS. I think we have another chart which may help to determine that.

We have a chart covering the years 1924 to 1952 by annual deliveries of motor carriers; perhaps if you will look at the 1952 figures and compare them, you may be able to see what they are.

(The chart previously referred to follows:)

Record of bus sales by vehicle manufacturers 1924 through 8 months 1955

	3 yrs.— 1924 through 1926	1927 Per- through cent 1931	1932 Per- through cent 1936	1937 Per- through cent 1941	1942 Per- through cent 1946	1947 Per- through cent 1951	27 years		1952	1953	1954	Per- cent 1955	Per- cent 1955									
							Total	Per- cent														
G.M.	3,161	20	5,411	28	5,398	39	9,842	32	9,859	31	19,522	43	53,192	34	2,344	66	2,539	73	2,700	78	1,802	80
Group A (4 manufac- turers)	2,671	40	8,702	44	7,389	53	12,641	42	7,392	23	16,270	34	57,665	37	728	21	402	12	435	12	205	9
Group B (5)							2,611	9	5,178	17	4,731	11	12,520	8	314	9	384	11	281	8	191	9
Group C							3,191	10	8,975	28	3,751	8	15,917	10	147	4	143	4	58	2	42	2
All others	6,352	40	5,460	28	1,080	8	2,143	7	8,321	1	1,663	4	17,049	11								
Total	15,814	100	19,573	100	13,867	100	30,428	100	31,724	100	44,937	100	156,243	100	3,533	100	3,468	100	3,474	100	2,240	100

¹ These represent the war years during which G.M. groups B and C and those listed as "All others" manufactured a rather large number of buses for the military, whereas those in group A manufactured very few for military use.

Group A—Twin Coach Co., Mack Co., A. C. F. Brill Co., White Motor Co.; B—

Flxible Co., Aerocoach, Beck, Fitzjohn, Southern; C—Beaver, Marmon Harrington, Pony, Reo, Superior, Checker, Cal-Trausit, all others. All others—Crown Coach, Transcoach, General Car Canadian Car.

Senator O'MAHONEY. May I interrupt, Mr. Burns, before you go to that table? The first table about which you have been testifying shows that for the 27-year period ended in 1951, a total of 156,343 buses were built, am I correct? That is the column in the middle of the table.

Mr. FAGEOL. Yes, correct.

Senator O'MAHONEY. Of these 156,343, General Motors manufactured 53,192; group A, which includes 4 manufacturers, turned out 57,665; group B, constituting 5 smaller manufacturers produced 12,520; group C, the still smaller group, but larger in number, turned out 15,917; and all others inclusive, the very small ones, 17,049.

So that the percentages of sales during that 27-year period showed 34 percent for General Motors, 37 percent for the 4 manufacturers called group A, 8 percent for the 5 manufacturers called group B, 10 percent for those in group C and 11 percent for all others, making the total of 100 percent.

At the same time, the chart shows that for the 3 years 1924 through 1926, General Motors produced 20 percent of the cars, and group A, 4 manufacturers, 40 percent. In 1927 through 1931, General Motors had 28 percent, group A, 44 percent. No percentages are given for either of those periods for the other groups at all.

Mr. FAGEOL. Most of those smaller companies were not in the bus business at that time.

Senator O'MAHONEY. In the period from 1932 through 1936, General Motors grew from 28 percent of the production to 39 percent, but the 4 manufacturers in group A increased their percentage from 44 to 53 percent.

From 1937 through 1941, both General Motors and the 4 manufacturers in group A suffered a reduction in percentage; General Motors went back to 32 percent, group A went back to 42 percent.

This period, for the first time, groups B, C, and all others, began to appear; in other words, during the period 1937 to 1941, the competition among small manufacturers began to make itself evident. Group B, for the first time, had 9 percent of the total production, group C, 10 percent, all others 7 percent.

We come then to the period 1942 through 1946. General Motors dropped again 1 percent, although the number of cars was slightly larger; group A dropped to 23 percent, whereas groups B, C, and all others—no, groups B and C increased, B from 9 to 17 percent; C from 10 to 28 percent; whereas all others, the little fellows, dropped from 7 to 1 percent of the total.

Mr. FAGEOL. Might I add there, Senator, that—

Senator O'MAHONEY. Yes, sir.

Mr. FAGEOL (continuing). Was the war period during which time the Government was dictating what type, size bus, and who could build them. That accounts for that rather radical change in the figures.

Senator O'MAHONEY. Yes, I can understand that. The competitive system was upset by reason of the war.

Mr. FAGEOL. That is right.

Senator O'MAHONEY. 1947 through 1951, General Motors resumed its forward march, producing 19,522 out of a total of 44,937, or 43 percent.

Group A of the 4 manufacturers increased from 23 percent to 34; group B dropped to 11 percent from 17; group C dropped from 28 percent to 8, and all others increased from 1 percent to 3.

So there is a significant trend shown in these figures. It would indicate that through 1951, at least, including the years of the war, which upset the figures, the total shown indicates a reasonable competitive situation; am I right?

Mr. FAGEOL. Yes, that is correct.

Senator O'MAHONEY. But then if you go to the last column on the page, which summarizes the results for the manufacturer during the years 1952, 1953, 1954, and 8 months of 1955, we find that the situation has changed so that during 1955 General Motors, which, during 27 years prior to 1952, had manufactured 43 percent of the buses, was now manufacturing 80 percent of the buses; group A had dropped from 34 to 9; group B had dropped from 11 percent to 9 percent; group C had dropped from 8 percent to 2 percent; and all others had disappeared from the scene?

Mr. FAGEOL. Correct.

Senator O'MAHONEY. Thank you, sir.

Mr. BURNS. Mr. Fageol, I believe that these figures you have supplied us from 1952 to 1954 do include intercity and city buses. The figures are comparable to the schedule submitted to us by another manufacturer, and I think you will find that they are very close to the same figures on the chart that you produced.

Mr. FAGEOL. Yes, that is correct.

Mr. BURNS. Can you tell us which of these companies that you have named have ceased manufacturing buses entirely?

Mr. FAGEOL. In group A the A. C. F. Brill Co., the White Motor Co., and Twin Coach Co. ceased manufacturing. However, Twin Coach manufacturing was transferred over to the Flxible Co., and they now make Twin Coaches, the urban type.

Mr. BURNS. Do you know whether any of these other companies in groups B or C have—

Mr. FAGEOL. In group B, the Aerocoach Co. has gone out of business.

Mr. BURNS. How about group C?

Mr. FAGEOL. Group B—pardon?

Mr. BURNS. And in group C have any of those gone out of business?

Mr. FAGEOL. Group C—Beaver, Pony has gone out of the bus business, and Reo Bus Co. has gone out of the bus business; the Checker Cab-Transit type have now gone out of the bus business.

Mr. BURNS. In the group called all others, have any of those gone out of business?

Mr. FAGEOL. Transicoach and General Car have gone out of the business.

Mr. BURNS. Have you any explanation for the increase in percentage by General Motors to 80 percent, and the corresponding decrease by the other companies to the extent that two of them, Brill and White, have given up the manufacture of buses entirely?

Mr. FAGEOL. Probably one of the most basic reasons for that lies in the fact that in the early days, 10 to 20 years ago, the General Motors Co. financed, put in initial capital, in the National City Lines, which have now become one of the biggest bus operators in the United States,

not only in National City but in other companies which they now control.

That company, having become standardized on General Motors and their maintenance and that sort of thing, have continued to buy them. That has resulted in quite a large percentage.

They had also, in the early days, secured the account of people like Public Service of New Jersey. There was no investment there that we know of needed. They are one of the big operators, so they had standardized, and they continued to get their business.

The other company which General Motors helped finance in the early days was the Greyhound system. They are the biggest in the intercity field. They also were standardized and have continued to buy their products.

That is probably the greatest reason for their business continuing, and our smaller companies were not in the business, were not selling any of those companies except in the very early years.

Mr. BURNS. Do you know whether there was any financial assistance given to the New York Omnibus Co.?

Mr. FAGEOL. I understand that in the early days General Motors, or rather preceding General Motors, in the days of John Hertz at the Yellow Coach, did lend some financial assistance. However, I have no direct knowledge of that.

Mr. BURNS. Now, approximately how much of the production of transit or city buses is used by these companies, such as National City Lines, Public Service of New Jersey, and the New York companies?

Mr. FAGEOL. Without counting up the figure, I would say over half.

Mr. BURNS. It is your view that the financial assistance which General Motors gave to those companies has enabled it to have over half of the business of bus manufacturing?

Mr. FAGEOL. It enabled General Motors in the early days through their financial connections to control that business. That thing has since passed out, I understand, but being standardized, they continue to buy the product.

Mr. BURNS. Do you know what the arrangements were between Greyhound and General Motors with respect to financing or the purchase of General Motors buses?

Mr. FAGEOL. I would not know the details of it except I do know that General Motors—I believe it is a historic fact—did make a substantial investment in the Greyhound system when it was first organized.

Mr. BURNS. You are aware of the fact that the Government brought an antitrust suit against the National City Lines, General Motors, and others, and that the court decrees have been entered with respect to the violations of the law which were found.

Will you tell us whether those decrees will open up the bus business so that other bus manufacturers will have an opportunity to sell to those companies which previously were bound to buy from General Motors?

Mr. FAGEOL. Because of the standardization of those companies on General Motors buses, I think it will have no effect on their future purchase. As a matter of fact, since that decree was entered, that has been proven.

Mr. BURNS. Would you explain that a little more in detail as to why it is that even though there is no agreement or may not lawfully be an agreement to buy exclusively from General Motors, that the effect of having purchased for a period of 15 or more years will result in the companies continuing to buy, even though they are not obliged to buy from General Motors?

Mr. FAGEOL. Because all of their maintenance shops are set up for maintenance around that one vehicle and its engine and other parts, and mixed fleets would not be economically very wise today.

Mr. BURNS. So that as far as the competitors of General Motors are concerned, the court decrees do not aid them in obtaining any business previously foreclosed?

Mr. FAGEOL. I understood the court decree was one where they had to divest themselves of the investment rather than one that would prohibit them buying any product they chose.

Mr. BURNS. Can you tell us any other factors which caused General Motors to have the increase in its position in the market while the other companies have decreased?

Mr. FAGEOL. Nothing we can prove on it, but our conviction is that it is through the use of their great economic powers of being able to influence banks, directors, railroads for freight, and that sort of thing, because we had, prior to this late period, a number of good accounts that were standardized on Twin Coaches, which the management wanted to continue, so they told us, and through action of the board, and so forth, they switched, and there is no letup of that.

There is no account too small apparently for them to want to dominate, and which they do dominate when they get ready to do so. The fact of the 80 percent is the best evidence I can offer you on that.

Senator O'MAHONEY. May I ask a question on that?

Mr. BURNS. Yes.

Senator O'MAHONEY. You have spoken about standardization and the effect of standardization upon purchasing because the shops, the maintenance shops, are built to handle a particular type of engine.

Mr. FAGEOL. And other parts.

Senator O'MAHONEY. And the parts, of course.

So that regardless of the type of the engine, it would be an expensive thing to change; was that your point?

Mr. FAGEOL. It would to mix them up over a lot of them. They could probably mix 1 or 2 others in if they had large numbers, and in time overcome that.

Senator O'MAHONEY. You have had a long experience with these engines which have been used by the various manufacturers; have you not?

Mr. FAGEOL. Yes, sir.

Senator O'MAHONEY. Has there been much difference in the engines?

Mr. FAGEOL. Engines properly maintained and developed for the work, after they have been in use a few years we do not think there is any difference in maintenance costs, no measurable difference.

Senator O'MAHONEY. Do you rate one engine as better than another?

Mr. FAGEOL. Not particularly, after they have been in use a number of years, and developed the bugs out of them.

Senator O'MAHONEY. I am not expertly asking the question that is intended to derive the information which I think you have. Do you think that any of these engines are notably better than any other?

Mr. FAGEOL. No, I do not even think our engine is better than our competitors where they have developed it over a period of years.

Senator O'MAHONEY. Do you think your engine is as good as General Motors'?

Mr. FAGEOL. Yes, sir.

Senator O'MAHONEY. Do you think General Motors' is any better than any other engine, except yours?

Mr. FAGEOL. No.

Senator O'MAHONEY. Then you do not attribute the increase of General Motors to the superiority of the engine?

Mr. FAGEOL. No, I do not.

Senator O'MAHONEY. Will you answer the same question with respect to the buses as a whole?

Mr. FAGEOL. No, I do not think there is any superiority of one standard make over the other today because we have properties who have continued to operate both types, and you analyze their maintenance-cost figures and operating figures, and they are pretty much alike. It would depend on the particular company; they will vary some.

Senator O'MAHONEY. We have in the Nation today and in the world a great new industry, the airplane industry. What is there to prevent the exercise of financial power to bring about in the airplane industry, the same sort of concentration that has been developed here with respect to buses and with respect to diesels?

Mr. FAGEOL. I would not know of anything to prevent it in airplanes or in most any other big basic industry.

Senator O'MAHONEY. Then, speaking out of your experience, you feel that another industry, using motors, like the airplanes, could just as easily be brought under the managerial control of a small executive committee by the exercise of concentrated financial power, as has been demonstrated here with respect to General Motors?

Mr. FAGEOL. I believe that with a satisfactory product, and General Motors and others make satisfactory products, and that with enough money, you can control it pretty well or influence it, certainly.

Senator O'MAHONEY. Thank you, sir.

Mr. BURNS. Would you describe for us the nature of the extent to which a bus manufacturer constructs the bus himself and the extent to which he purchases parts from other companies?

Mr. FAGEOL. Well, most bus manufacturers produce the body and the chassis complete; they usually buy the seats.

Mr. BURNS. When you say the body and the chassis, that is referred to as an integral part, built all together?

Mr. FAGEOL. That is correct. The axles, so far as I know with, I believe, the exception of Mack now; they all buy it; the transmissions, with the exception of General Motors, who now make their own, they all buy them.

Tires, of course, they all buy; metals that go into them they buy; engines are manufactured by General Motors for their buses, by Mack for their buses; by Twin Coach for the new Flexible buses, and I do not believe any of the other bus manufacturers make their own engines.

Mr. BURNS. So the other manufacturers buy engines either from those three companies or from some other companies?

Mr. FAGEOL. Some other companies.

Mr. BURNS. What are some of the engine companies that make suitable engines for use in these types of buses?

Mr. FAGEOL. The Cummings Co. make suitable engines, they make diesel only; Twin Coach makes both, gasoline, propane, and diesel.

Mr. BURNS. When you say Twin Coach, are these engines made by the Twin Coach Co. or by the Fageol Co. which is a corporate—

Mr. FAGEOL. They are made by the Fageol Co., which is an independent company.

Mr. BURNS. Just for the record you do have a company that makes engines, the Fageol Products Co.?

Mr. FAGEOL. That is right.

Mr. BURNS. How long has that company been making engines?

Mr. FAGEOL. About 15 years.

Mr. BURNS. So that for the Twin Coach buses you made your own engines, that is, you had another division or another corporate entity under your control, which would supply the engines for your buses?

Mr. FAGEOL. After the war we made them up. Until that time we bought them.

Mr. BURNS. In the General Motors operation they have a division which makes buses; is that right?

Mr. FAGEOL. That is correct.

Mr. BURNS. Does that bus division manufacture all of the parts or does that division obtain parts either from outside sources or from other General Motors divisions in a manner similar to other bus manufacturers?

Mr. FAGEOL. All three conditions are true. They make certain parts, they buy certain parts from outside companies; they buy engines from their engine plant; they buy transmissions from their Allison division, which makes the transmissions.

Mr. BURNS. How long have they been buying transmissions from their own divisions?

Mr. FAGEOL. Oh, they used to buy from the Spicer Co., of Toledo, from which we used to buy. I believe it is around 15 years they have been making their own; I am not sure.

Mr. BURNS. Are there some important parts of the bus which General Motors bus division obtains from outside sources?

Mr. FAGEOL. They buy their axles from the same source others do—Timken-Detroit Axle Co., Detroit, Mich.

Mr. BURNS. How did the price of your bus compare with the price of the General Motors bus?

Mr. FAGEOL. They were always comparable.

Mr. BURNS. You were referring to some accounts which you did have, which you lost to General Motors. In those instances, were you told that that was because of the price that you charged or anything connected with the quality of the bus itself?

Mr. FAGEOL. No.

Mr. BURNS. Just what reasons were given for changing from your bus to the General Motors bus?

Mr. FAGEOL. The reason they gave us was that they preferred it.

Mr. BURNS. You did state something about the directors of these companies. Did you deal with the directors of the companies in trying to sell buses or did you deal with the managers of the companies?

Mr. FAGEOL. We dealt with the managers of the companies.

Mr. BURNS. And what problems did you encounter in selling to the managers whom you had previously sold your buses to?

Mr. FAGEOL. We had no trouble getting their recommendations, in most cases.

Mr. BURNS. What is your explanation for losing some of these accounts to General Motors?

Mr. FAGEOL. The excuse the management gave us was that the directors had put pressure on them to buy General Motors.

Mr. BURNS. Well, now, what was the ultimate effect on your bus business of this economic pressure which General Motors was asserting, as you have put it?

Mr. FAGEOL. Well, the effect was that in the reduction in numbers of buses bought, we couldn't sell enough buses to afford to keep our factory running on buses.

Senator O'MAHONEY. That factory was in what town?

Mr. FAGEOL. That is in Kent, Ohio.

Senator O'MAHONEY. How many people were employed?

Mr. FAGEOL. We had at the time we were building buses an average of around 800. Since that time it's been down to two, three hundred, because we have not yet been able to develop other products to take its place, which we are trying to do.

Mr. BURNS. Have you any idea of why the directors of these companies put pressure on the managers to order the General Motors bus rather than your bus?

Mr. FAGEOL. I wouldn't know, but the natural assumption would be that, in general, bankers, and so forth, on their boards, or in General Motors, would favor them, I suppose. "Scratch my back, and I'll scratch yours."

Mr. BURNS. When did you cease making buses with your Twin Coach Co.?

Mr. FAGEOL. I think it was 1951.

Mr. BURNS. I think this chart which we have shows some Twins in 1952, and about 12 in 1953.

Mr. FAGEOL. That is probably correct. We were tapering out of the business in 1952 and cleaning up orders we might have had on hand.

Mr. BURNS. Does the Twin Coach sell its city-type buses to some of the large cities of the United States?

Mr. FAGEOL. When we were in business, we did, yes.

Mr. BURNS. And who were some of the large cities you sold to?

Mr. FAGEOL. City of Seattle.

Mr. BURNS. Did you also sell to Chicago?

Mr. FAGEOL. Chicago, Boston, Kansas City, practically all the major cities.

Mr. BURNS. Now, what did you do with your bus business?

Mr. FAGEOL. We turned it over to the Flexible Co., who were manufacturing intercity buses.

Mr. BURNS. And what were the reasons for turning it over to them, and what were the conditions of the sale?

Mr. FAGEOL. We turned them over our tools, jigs, and inventory, which they bought. Then as, if, and when, they make any profit out of it, we get a little bit of it for a period of 10 years.

Mr. BURNS. Why would they be able to carry on the business of selling these transit-type coaches if you were unable to do it?

Mr. FAGEOL. Because they were in the intercity business which had not been too seriously affected, and by adding this volume of business which they could get with ours, it made it possible and profitable to run their plant.

Mr. BURNS. Did your company endeavor to substitute any other line of business for the bus business which it lost?

Mr. FAGEOL. Yes, we endeavored to make a special truck, and a number of other products. We developed vehicles for the Post Office Department, but the volume of none of that has been big enough to anywhere near carry the burden of the company. We have had very substantial losses.

Mr. BURNS. I have here a document entitled "Progress Report to All Employees of Twin Coach Co.—Kent Manufacturing Division," dated October 27, 1953. Will you tell the committee who made this report and the reason for it?

Mr. FAGEOL. I believe this was made at the time there were some labor negotiations on. We wanted our employees to know the condition of the company at that time financially, and its prospects. We thought they were entitled to know that.

Mr. BURNS. And I think it would be well if you would read for the record, beginning with paragraph 2.

Mr. FAGEOL. I called all of our employees in to a meeting in the factory there, and made the following talk to them. I said:

I want to make it clear that the purpose of this talk is to inform you and not to complain or criticize anyone. I feel that you should know about your company's plans and problems, as if we are to successfully carry out our plans, we need the best and most from every one of you in order to meet the many difficult problems involved.

As you all know, Twin Coach Co.'s Kent Manufacturing division is changing its basic long-range product from buses to specialized trucks, and this a major, slow and expensive operation. No doubt many of you wonder why we gave up bus manufacturing.

Our reasons for going out of the bus business were very simple—namely, that for the last 4 years the share of bus business available to this company and to the 3 other independent major bus manufacturers has not been sufficient to enable us to keep this plant open for that purpose. Therefore we were faced with the necessity of either closing this plant and liquidating it or seeking a new line of business.

As further evidence of this situation, the White Motor Co. has recently closed up and sold their bus plant; the ACF-Brill Co., we are told, is completely closing out bus manufacturing and devoting their factory to other uses as they have not received a dozen bus orders in the last year.

They did sell out their plant.

This condition has been caused by several factors. First, the number of buses in use is declining, not increasing, and they are now only replacing their buses on a 15-year average instead of the previous 10-year. Further, one big company, through its great economic power, has been able to secure a total of over 75 percent of the bus business.

We anticipate it is going to take another 2 to 3 years in order to develop enough sales volume covering the new field in which we have entered—namely, trucks and vans—in order to secure enough business in this plant so that it can be profitably operated and a normal employment provided for this community.

Mr. BURNS. Have you any suggestions as to what this committee might consider in order to alleviate the type of situation which is now facing your company and others in the bus industry?

Mr. FAGEOL. Well, it is a complicated problem, and it is a situation that has developed under our free enterprise laws and rules, and properly should.

Certainly, no one would want to deny any big company the right and the power to put in pushbutton machinery, and that sort of thing, which takes great amounts of money, because to do so you would deprive the country of the future economic benefits of that which the country needs, and should have. I don't know whether there is ever any way to successfully stop any big company from using, where it can, a sales advantage. Its great economic power may be one; there may be others, I don't know.

The only possible suggestion I would have, if it were practical, and I am not at all sure that it is, would be perhaps to enact legislation that, where companies controlled by public utilities or public bodies or our own Government purchases, might prevent the placing over 50 percent of any sizable order with one company, so that you would get more in the picture.

What the complications of that are—no doubt there are many—I wouldn't know. It is one possible solution, if it is a solution. I don't know.

Senator O'MAHONEY. Is it in the public interest to permit a condition to continue by which apparently efficient manufacturing corporations are pushed out of business through the exercise of the financial resources of one big company?

Mr. FAGEOL. I would think that would be a matter of degree. I don't believe it is open and shut, as you might say.

As I say, if we could secure free, equal competitive advantages, smaller companies, then I believe they would have all they are entitled to.

Senator O'MAHONEY. Well, do you think it is in the public interest to permit a situation to develop whereby, through the use of the complex and little understood business of issuing securities, borrowing money, and the like, for 1 company to undertake a program of purchasing 1 or more consumers of its principal product, and through the ownership of that consumer and the consumer line, drive out of business other suppliers?

Mr. FAGEOL. Carried to its ultimate, no.

Senator O'MAHONEY. Well, where is the stopping point?

Mr. FAGEOL. I don't know. We certainly do not want to contemplate any legislation which will defeat our free-enterprise system.

Senator O'MAHONEY. What sort of a free-enterprise system do you have when there are no rules to the game?

Mr. FAGEOL. If it goes on as it is, as is evidenced by these charts, where one company goes up to 80 percent and that continues in others, why, in time, there is only one thing bigger, or they finally become as big almost or bigger than Government.

Then, of course, there is nothing Government can do but take them over, and then you head right into socialism, which none of us want—at least, I don't.

Senator O'MAHONEY. Well, I don't know whether very many people really do in the country.

Mr. FAGEOL. I think that's correct.

Senator O'MAHONEY. But there seems to be quite a danger of drifting into socialism. Certainly I don't see much difference between so-

cialism and the sort of order which General Motors has established, whereby it controls so substantial a proportion of diverse industries of the United States. Who knows when it may have to change its name from General Motors to General Industries, Inc., if permitted to continue the use of these various devices.

Mr. FAGEOL. It is a very grave problem. I am sure I am not bright enough to know the answer to it.

Senator O'MAHONEY. Well, take your own case. You were selling buses to the National City Lines—wasn't that the name of the corporation?

Mr. BURNS. That is the name of the corporation, but I don't know whether we sold to them.

Senator O'MAHONEY. You sold to that company, didn't you?

Mr. FAGEOL. National City Lines, very few, because when they were organized it was through the deal that the Government brought the suit on, and General Motors had a high percent of that business tied up, and Mack the balance of it.

Senator O'MAHONEY. Did you sell to any company, transit company, which afterwards fell under the control of General Motors, and then said, "We are not going to use your cars any more?"

Mr. FAGEOL. Not under the direct control of General Motors, no. I don't know of any case of that kind.

Senator O'MAHONEY. How about National City Lines; didn't you testify to that here a little while ago?

Mr. FAGEOL. I said I didn't know of any other cases. National City Lines did fall under their control for a time.

Senator O'MAHONEY. But I am trying to find out whether in your case the consumer came under the control of General Motors. As I remember your testimony, one of the persons with whom you negotiated the sales of your company, in explaining the dropping of your line and the adoption of the other, said, "Well, we like the General Motors bus better," and I gathered from the way you gave the testimony, that this man had a sort of a gleam in his eye when he said that, indicating that orders had come down.

Mr. FAGEOL. I think I can answer your question, Senator.

Senator O'MAHONEY. I wish you would.

Mr. FAGEOL. By pointing out that not directly under control of General Motors but under control of companies like National City, Los Angeles Railway used to be one of our big accounts—

Senator O'MAHONEY. Yes.

Mr. FAGEOL. National City Lines bought it out, and it immediately went 100 percent General Motors. The key system at Oakland, Calif., was the same way. We used to get business in Philadelphia. They have taken that over and so on down the line, so indirectly it came under their influence.

Senator O'MAHONEY. So the process of merger had the effect of depriving you of the business of a transit line which theretofore had been perfectly satisfied with your product?

Mr. FAGEOL. That's correct.

Senator O'MAHONEY. Do you think that the continuation of such a merger situation is in the public interest?

Mr. FAGEOL. If you can continue to do it, I don't know, as I say. I have said here I would like to see it stopped, some way to do it, but how and stay within our free enterprise system? I don't know.

Senator O'MAHONEY. People talk about the free enterprise system and don't seem to be willing to face up to a real definition of the free enterprise system.

The testimony which we have had before this committee from the Department of Justice clearly shows that under the antitrust laws as they now exist, a merger is allowed or prohibited merely on the decision of 1 or 2 men in Government, because the law isn't sufficiently definite to make it clear to all who run how to read the sentence, and law in a popular Government ought to be written so all who run may read.

Now mergers which undoubtedly have an effect upon the public economy are permitted in one instance and denied in another instance, and some of them have the effects that you have described. If it were possible to devise a law which would cover a situation such as you and others in your place have suffered, would that not be in the public interest?

Mr. FAGEOL. It might be, but it is inconceivable to me how that could be accomplished.

Senator O'MAHONEY. Except that you have suggested a percentage.

Mr. FAGEOL. Without putting in restrictions that would really defeat almost its purpose.

Senator O'MAHONEY. Do you think that one company ought to be permitted to go into an unlimited number of diverse industries?

Mr. FAGEOL. I don't know. My philosophy has always been that if you can't compete, you don't belong; so we couldn't compete in the bus business, we got out of it. We will do something else.

Senator O'MAHONEY. But even in the prize ring they had to develop some rules you know.

Mr. FAGEOL. That's correct.

Senator O'MAHONEY. And if we can't develop some rules for the national economy, it is certain that the track on which we are now traveling is one which means concentration of economic control in a few private hands, who by secret documents pull the strings and push the buttons by which automatically little business is pushed off the boards.

Mr. BURNS. I think that is all I have.

Senator O'MAHONEY. Thank you very much, sir. We are much indebted for your presentation, and may I say, sir, for the record and for those who are here, that as a witness you have all the looks and all the ready responses and all the indications of intelligence that any witness who has appeared here yet has displayed. I do not believe that, fighting in your class, you could be very well overcome.

Mr. FAGEOL. Thank you, Senator.

Mr. BURNS. The next witness is Charles W. Perelle, and Assistant Counsel Donald McHugh will examine him.

Senator O'MAHONEY. Mr. McHugh?

Mr. PERELLE. Good morning, Senator.

Senator O'MAHONEY. Good morning.

Mr. McHUGH. Mr. Perelle, with whom are you associated at the present time?

STATEMENT OF CHARLES W. PERELLE, PRESIDENT, AMERICAN BOSCH ARMA CORP.

Mr. PERELLE. American Bosch Arma Corp.

Mr. McHUGH. Where are they located?

Mr. PERELLE. Headquarters are in Garden City, Long Island.

Mr. McHUGH. How long have you been associated with American Bosch?

Mr. PERELLE. Approximately a year and a half.

Mr. McHUGH. And what is your position with that company?

Mr. PERELLE. President.

Mr. McHUGH. Mr. Perelle, with whom were you associated before you joined American Bosch?

Mr. PERELLE. ACF-Brill in Philadelphia.

Mr. McHUGH. In what capacity were you connected with ACF-Brill?

Mr. PERELLE. I was president of the company.

Mr. McHUGH. And how long were you president of ACF-Brill?

Mr. PERELLE. Five years.

Mr. McHUGH. You joined ACF-Brill then about in 1949?

Mr. PERELLE. 1949.

Mr. McHUGH. What was your background previous to your joining Brill?

Mr. PERELLE. Previous to joining Brill, I was president of the Gar Wood Industries of Detroit, Mich.

Mr. McHUGH. For how long a period were you with them?

Mr. PERELLE. For 5 years.

Mr. McHUGH. And where were you previous to that?

Mr. PERELLE. Previous to that I was with Hughes Aircraft Co. of Culver City, Calif., for a period of approximately 15 months.

Mr. McHUGH. During the 1949-to-1954 period that you were with ACF-Brill, what was the principal business of the company?

Mr. PERELLE. The principal business of the Brill Co. was trolley coaches and buses. As a matter of fact, it was exclusively trolley coaches and buses.

Mr. McHUGH. And for how long a period of time had the ACF-Brill Co. been in the trolley coach and bus field?

Mr. PERELLE. Oh, its origin goes way back about 60 years to the horsecar and streetcar, in the transit business that was its origin actually. It had been in the transit business for all of its life.

Mr. McHUGH. In the streetcar and bus business for the whole time of its operation?

Mr. PERELLE. Streetcar, horsecar, bus, everything.

Mr. McHUGH. Was it always operated as the ACF-Brill Co.?

Mr. PERELLE. No; I believe it was founded as the J. G. Brill Co. many years ago.

Mr. McHUGH. Is that in Philadelphia?

Mr. PERELLE. Philadelphia, the J. G. Brill Co. sold out or merged with the ACF, American Car & Foundry. I have forgotten exactly the total name of that company, but I think it was American Car & Foundry, and they were merged into the ACF-Brill Co.

Mr. McHUGH. About when was that? do you remember?

Mr. PERELLE. In the early thirties.

Mr. McHUGH. And it continued to operate as the ACF-Brill Co. then?

Mr. PERELLE. Yes.

Mr. McHUGH. Down until the time you left the company?

Mr. PERELLE. That's correct.

Mr. McHUGH. Why did you leave ACF-Brill to go to American Bosch, Mr. Perelle?

Mr. PERELLE. The ACF-Brill Co. and the American Bosch Co. are governed or controlled by the same banking fraternity, and as we had made the decision to go out of the bus business and had by and large cleaned up our problems and our program at Brill, I was asked by our banking interests to go to the American Bosch Arma Corp., which at that time was having some problems.

Senator O'MAHONEY. I am very much interested, Mr. McHugh, in a word that the witness used. If I remember your phrase, it was that at that time Brill or one of the companies was controlled by a "banking fraternity." Is that correct?

Mr. PERELLE. Yes. I guess I did say that, Senator.

Senator O'MAHONEY. And what was that situation?

Mr. PERELLE. The Allen interest in New York bought out the Avco interest in the Brill Co. They bought, I think, approximately 50 percent of the outstanding stock from Aviation Corp. or the present Avco Corp., and control passed from Avco to Allen at that point.

Senator O'MAHONEY. And what was Allen?

Mr. PERELLE. Allen was Allen & Co., New York, investment banking firm.

Senator O'MAHONEY. An investment banking firm. That is what you meant by the "banking fraternity." This investment banking company was at that time controlling the enterprise by reason of purchase of the Avco stock interest?

Mr. PERELLE. That's right.

Senator O'MAHONEY. Was that the majority interest?

Mr. PERELLE. Yes, 50 percent.

Senator O'MAHONEY. It was at least the controlling interest.

Mr. PERELLE. It certainly was.

Mr. McHUGH. You say that the Allen Co., the same banking interest, controlled American Bosch?

Mr. PERELLE. Yes.

Mr. McHUGH. And that is the reason you transferred from the ACF-Brill to American Bosch?

Mr. PERELLE. Yes.

Mr. McHUGH. I believe you stated, Mr. Perelle, that ACF-Brill went out of the bus business.

Mr. PERELLE. That's correct.

Mr. McHUGH. What is the date in which they went out of the bus business?

Mr. PERELLE. Well, that is a little difficult because it was a tapering-off proposition, very similar to Mr. Fageol's situation in that as orders decreased, the volume was so small that we had to find other business to take into the plant to carry the overhead, and we would make buses for a while and do something else for a while, so it was a tapering-off thing. We sort of accumulated orders as it were, to put into our manufacturing operation.

Mr. McHUGH. Well, was ACF-Brill finally out of the bus business at the time you transferred over to American Bosch?

Mr. PERELLE. Yes, 100 percent, had been for almost a year. Its properties had been disposed of, its machine-tool equipment had been disposed of, its principal subsidiary, the Hall Scott Motor Car Co., had been spun off as a separate corporation.

Mr. McHUGH. Whereabouts were they located?

Mr. PERELLE. Berkeley, Calif. They had been spun off—

Senator O'MAHONEY. I think that is a good phrase. I hope the members of the staff will remember it, and perhaps the press; the company had been spun off. There are a lot of companies being spun off by the merger pattern of our times.

Mr. McHUGH. Will you explain what is meant by that term, "spin off"?

Mr. PERELLE. It was a wholly owned subsidiary in the engine business, had been for many, many years, as Mr. Fageol testified, at one time had been the source of his engines. We wanted to continue it in the engine business. It is still in the engine business. So we separated it and gave it to the stockholders as a separate company.

Senator O'MAHONEY. What I wanted to get was the mechanical explanation of this. What happens? What causes spinning off?

Mr. PERELLE. We were endeavoring—

Senator O'MAHONEY. Forget what you are doing, what you were doing, and just let's talk mechanics for a minute. What is the difference between centrifugal power and force?

Mr. PERELLE. If we gyrate things fast enough, things fly off.

Senator O'MAHONEY. Yes, that's right.

Mr. PERELLE. Well, I think principally the objective was to spin this off as a dividend to the stockholders, and I might add that the stockholders of ACF-Brill Co. as such had been almost 30 years without a dividend.

Senator O'MAHONEY. Well, we are in an economic situation now in which powerful centrifugal forces are at play, bringing about a tremendous amount of concentration, and that concentration is also accompanied by the spinning off of small, independent businesses. That is really the problem before us, and I am awfully glad you used that mechanical phrase.

Mr. McHUGH. Mr. Perelle, what has become of the physical properties or assets of the ACF-Brill Co.?

Mr. PERELLE. The physical property in Philadelphia is now owned by the Penn Fruit Co. We sold the property there to the Penn Fruit Co., which is a grocery chain.

Mr. McHUGH. These are the properties for the manufacture of buses.

Mr. PERELLE. That's right, and the machinery has been disposed of to many different buyers.

Mr. McHUGH. What has now become of the ACF-Brill Co.?

Mr. PERELLE. The ACF-Brill Co. as such was converted into cash, and that cash has now been employed in other fields, and I believe a merger is taking place at the present time of several independent grocery chains which will eventually constitute the residue of the ACF-Brill Co.

It may, it probably will, change its name to something more closely identified with the grocery business, the food-store business.

Mr. McHUGH. The ACF-Brill Co. has then not yet been dissolved, the corporation?

Mr. PERELLE. No, it has not. I believe there is a stockholders meeting called for the 19th of December to pass on the proposed merger as well as, I believe, the change in name of the corporation.

Mr. McHUGH. The ultimate effect of this would be that a company in the business of manufacturing buses will ultimately end up in the retail food business?

Mr. PERELLE. That's correct.

Mr. McHUGH. Mr. Perelle, during the period of Brill's history in the bus business, do you know what was the largest number of unit buses which it ever sold?

Mr. PERELLE. No, I don't.

Mr. McHUGH. Can you give us any idea of approximately how many?

Mr. PERELLE. That happened before my time, Mr. McHugh, and I would think it was in the year probably 1946 or 1947, in through there.

Mr. McHUGH. Can you tell the committee about what your annual unit sales of buses were during the period that you were president of ACF-Brill?

Mr. PERELLE. That too, would be very difficult. It jumped around a great deal.

At the time that I took over the presidency of the company, the company was scheduled to close down for lack of orders. The orders that were obtained subsequent to that were quite varied and spasmodic, I might say.

Mr. McHUGH. Mr. Perelle, this is a chart which has been submitted to this committee which shows some figures. Where it is underlined there, does that correctly represent the position of ACF-Brill, would you say, in those years?

Mr. PERELLE. 359, 345, 1,015, 385.

Mr. McHUGH. Would you state the years?

Mr. PERELLE. 1949 through 1952.

Mr. McHUGH. And what the figure for each of those years?

Mr. PERELLE. 359 for 1949, 345 for 1950, 1,015 for 1951, and 385 for 1952.

Mr. McHUGH. Does that include all types of buses?

Mr. PERELLE. All types, yes.

Mr. McHUGH. The ACF-Brill made both city and intercity buses?

Mr. PERELLE. That's correct.

Mr. McHUGH. Would you please explain why the large figure there for 1951?

Mr. PERELLE. Yes. That was a large military order for buses that came in. I believe 1,100 of those were for the military.

Mr. McHUGH. Besides the commercial bus business then that you were doing from 1949 to 1954, you were engaged in making buses for the military?

Mr. PERELLE. That's correct.

Mr. McHUGH. About what percentage of your total business would you say represented this defense type of work?

Mr. PERELLE. During those years it was very high. I would say 75 percent of our business was directly or indirectly military business.

Mr. McHUGH. And the rest would be normal commercial buses?

Mr. PERELLE. Normal commercial bus business.

Mr. McHUGH. Did you do more business in the intercity field than the city bus field?

Mr. PERELLE. I think it was about 50-50. There are some figures to show that. I don't happen to have them, but my recollection is it would be about 50-50. The price of the intercity buses being substantially higher than the city type, the dollar volume would be roughly the same.

Mr. McHUGH. Who were the principal customers for the intercity type of bus?

Mr. PERELLE. Our principal customers were National Trailways and Southeastern Greyhound, Florida Greyhound, Tash, people like that, Adirondack Stages.

Mr. McHUGH. There have been some figures introduced here this morning, Mr. Perelle, concerning the relative position of General Motors in the bus field. Do you know approximately what percentage the General Motors Co. was doing in the bus business at about the time that you got out of ACF-Brill?

Mr. PERELLE. Oh, yes; I was well aware of the fact that they were doing a substantial part of the business, and our ability to get sufficient bus business to keep us operating at a profit was a very deteriorating problem and probably the most important reason that we elected to get out of the bus business.

Mr. McHUGH. Had the ACF-Brill Co. sold buses to transit lines which were later taken over by the National City Lines Co.?

Mr. PERELLE. Yes.

Mr. McHUGH. Could you tell us where those cities were?

Mr. PERELLE. I believe we had buses in all of the principal cities in America almost paralleling Mr. Fageol's situation. We had buses in San Francisco and Los Angeles, Baltimore, Boston, Kansas City, St. Louis, all of those places.

Mr. McHUGH. Did the National City Lines acquire an interest in the transit properties in some of those cities?

Mr. PERELLE. Yes; they had interests in all of those prior to my getting involved in the bus business. I don't believe there were any of them acquired after.

Mr. McHUGH. Did you attempt to sell buses to these transit companies after National City Lines acquired its interest in them?

Mr. PERELLE. Oh, certainly.

Mr. McHUGH. What success did you have?

Mr. PERELLE. We didn't have very much.

Mr. McHUGH. You didn't get any of the business?

Mr. PERELLE. Generally speaking, I would say we did not get any of the business. I couldn't be 100 percent sure of that, but, by and large, that is a correct statement.

Mr. McHUGH. Did you get any of the replacement business?

Mr. PERELLE. Repair parts?

Mr. McHUGH. Repair parts.

Mr. PERELLE. Oh, yes. In all those cases where we had equipment on the streets it was necessary for these companies to continue to get replacement parts from us, and we did enjoy a considerable volume of replacement-part business from these various companies owned and controlled by National City Lines.

Mr. McHUGH. But they no longer continued to buy any new buses from you?

Mr. PERELLE. That's right; I think that's correct.

Mr. McHUGH. Do you know what the reason for that was?

Mr. PERELLE. No, I don't know. Like anything else, it is a very difficult thing to pin down.

Standardization being the biggest single objective, I guess, of an operator, he from an economic point of view must do everything he can to standardize, to keep his equipment uniform and his parts and mechanics and overhaul stations and fuel and all that on a standard basis.

Mr. McHUGH. What kind of buses did National City Lines and its affiliates standardize on?

Mr. PERELLE. I think principally it standardized on General Motors diesel. We did not make a diesel bus. We only made the gasoline bus.

Mr. McHUGH. National City Lines Transit Co. also used gasoline buses, didn't they?

Mr. PERELLE. They did at that time, oh, yes; very substantial numbers of them, as a matter of fact.

Mr. McHUGH. And didn't those properties of National City Lines standardize on General Motors' gasoline-type bus?

Mr. PERELLE. I can't answer that question. I don't believe that the competition that we ran into ever was directly against gasoline, I doubt that very much.

Mr. McHUGH. Well, weren't most of these properties controlled by National City Lines actually buying General Motors buses?

Mr. PERELLE. Yes; and I think they were substantially all diesel buses.

Mr. McHUGH. Didn't you know that there were agreements or contracts between General Motors and the National City Lines requiring National City Lines and its subsidiaries to purchase a certain percentage of their requirements from General Motors?

Mr. PERELLE. Well, I understood that there was such an agreement that had been broken up prior to my getting into the business. This cease-and-desist order, or whatever it was, took place before I became associated with the company, so my information of it is more hearsay than anything else, but I did understand that that was a part of the picture.

Mr. McHUGH. You entered ACF-Brill in 1949, you testified?

Mr. PERELLE. Yes.

Mr. McHUGH. I think it was in the same year that the criminal case was decided against National City Lines.

Mr. PERELLE. Yes; but it was prior to my coming into the picture, actually.

Mr. McHUGH. Now, besides the interest which National City Lines had in various transit companies at the time you became associated with ACF-Brill, did you know of any other interests which the National City Lines subsequently acquired in other transit properties throughout the United States?

Mr. PERELLE. No; I don't believe so. I don't think there were any acquired that I know anything about after 1950, none that affected our business, I don't believe.

Mr. McHUGH. Did you have any idea in approximately how many cities the National City Lines Co. had interests in transit properties?

Mr. PERELLE. No; I didn't. I knew it was very substantial, but I wouldn't know the total number or the total pattern of that thing.

Mr. McHUGH. Besides its connection with the National City Lines Co. and its subsidiaries, did you know whether the General Motors Corp. had any interest in any other transit systems or transit properties in the United States?

Mr. PERELLE. Oh, Greyhound was one of their principal customers.

Mr. McHUGH. Did it have some type of interest in the Greyhound Co.?

Mr. PERELLE. Here again I am told that way back in the early days they had financial interests in the big Greyhound Co., but had divested itself of those interests long before I became associated with this industry.

Mr. McHUGH. Was that a stock interest which General Motors had in Greyhound?

Mr. PERELLE. Here again I don't know the facts of the case. It just was a financial interest.

Mr. McHUGH. Did you know of any stock interests which any employees of General Motors Corp. had in any local transit systems besides the National City Lines Co. and its properties?

Mr. PERELLE. No. Employees?

Mr. McHUGH. Any employees of the General Motors Corp.?

Mr. PERELLE. No; I do not.

Mr. McHUGH. Mr. Perelle, do you think it is economically feasible for a transit company to maintain more than one line of buses?

Mr. PERELLE. Yes; I do, very definitely. There are illustrations of that in existence today. The town of Wilmington, Del., and the town of Chester, Pa., which has the same ownership, I believe the last I saw the figures Chester was 100 ACF and Wilmington was 100 percent General Motors, owned by the same company, the same operation, the same people, our equipment in one city and General Motors in just a neighboring city, so it apparently is quite feasible and economically possible to do. So long as you separate these operations, it doesn't, I don't think, make for a complex picture in any way, shape, or form.

Mr. McHUGH. Doesn't this require the maintaining of duplicate warehouses to carry duplicate parts?

Mr. PERELLE. They were separate. The town of Chester and the town of Wilmington are close by, and the Chester operations were 100 percent set up around the gasoline operation, and their facilities, their tankage, their parts store, were set up around our equipment, so there was no real problem.

They don't run all these buses into a central garage every night. They try and stock these garages out where they control the routes, and therefore the pattern, if this garage or warehouse is set up around a particular type of vehicle, presents no problem because they all concentrate, they come back to that one headquarters. It does present a little problem in the interchange of equipment in the event of emergency or breakdown or something, but that is not much of a problem.

Mr. McHUGH. Well, isn't it a fairly serious problem once a transit company in a particular city does standardize upon, say, a General

Motors bus that you run into problems of trying to convince that company to maintain another line involving say duplicate parts?

Mr. PERELLE. Very difficult, very difficult; that's right.

Mr. McHUGH. And doesn't it follow from that that once a company like National City Lines under its contracts had become committed to the General Motors Corp., it would be extremely difficult if not impossible for another manufacturer to break into that business?

Mr. PERELLE. That is exactly right. And once they became standardized around our equipment, our competitors had equally as much trouble breaking in.

Mr. McHUGH. Would you state again, for the benefit of the record, Mr. Perelle, just who your principal customers were for intercity buses?

Mr. PERELLE. The largest customer was Trailways, Dallas, Tex.; the second largest customer, I believe, was Southeastern Greyhound; and then there were many from there on down.

Mr. McHUGH. Southeastern Greyhound at this time was a part of the Greyhound Co.?

Mr. PERELLE. No; it was not.

Mr. McHUGH. An entirely separate company?

Mr. PERELLE. An entirely separate company.

Mr. McHUGH. Did you sell intercity type buses to the Greyhound Co.?

Mr. PERELLE. To the Southeastern Greyhound?

Mr. McHUGH. No; to the Greyhound Corp.

Mr. PERELLE. Very few, very few. We had a few in there that were sold, I believe, right in the postwar period, somewhere in 1946 and 1947.

Mr. McHUGH. About how many would you say you sold?

Mr. PERELLE. Very few. Again I am only repeating this from hearsay from our people, but it was because of our ability to make quick deliveries and Greyhound needed these buses, that we were given that business.

Mr. McHUGH. In other words, this was a critical period.

Mr. PERELLE. Critical period.

Mr. McHUGH. They were unable to get them otherwise and you were able to supply them in a short time.

Mr. PERELLE. Yes.

Mr. McHUGH. During your association with the ACF-Brill Co., had you attempted to sell buses to the Greyhound Bus Co.?

Mr. PERELLE. Oh, yes; yes.

Mr. McHUGH. And you had not been successful?

Mr. PERELLE. We had never been; no.

Mr. McHUGH. What was the reason for that?

Mr. PERELLE. I believe again the Greyhound people were committed to a standardization program which they couldn't afford to upset.

We did have, I believe we had, 100 percent equipment on Southeastern Greyhound as an illustration, and General Motors had not been able to break into that group until Southeastern Greyhound merged with the big Greyhound Corp., at which time we no longer received any business from Southeastern Greyhound.

Mr. McHUGH. When was that, do you remember?

Mr. PERELLE. Approximately 1951, I believe.

Mr. McHUGH. Do you know what the reasons were that the Greyhound Corp. standardized upon General Motors buses?

Mr. PERELLE. I do not know specifically what the reasons were; no. I do believe it goes way back to the original financial interests that General Motors is reported to have had in the formation of the big Greyhound Corp.

Mr. McHUGH. Now as in the case of National City Lines, do you know whether or not General Motors had requirements contracts or similar types of contracts with the Greyhound?

Mr. PERELLE. Not to my own knowledge, but I am told that they did have such a contract. My first experience with it was during the war, about 1944 or 1945, at which time we were asked by the Greyhound Corp. to design a bus.

Mr. McHUGH. Whom were you with at that time, Mr. Perelle?

Mr. PERELLE. Consolidated Vultee.

Mr. McHUGH. And what were they making then?

Mr. PERELLE. They were making airplanes. And we did go to work and did do a considerable amount of work on a preliminary design for a postwar bus for the Greyhound Corp.

Mr. McHUGH. How did Consolidated Vultee get interested in the manufacture of buses?

Mr. PERELLE. We were specifically looking around for some postwar products, which I believe most companies were, and because of our background and knowledge in fabrication of aluminum, I think it was only natural that we thought of manufacturing buses.

And likewise we had large plant capacities, and large areas available. It was just a natural desire to find products postwar. There was a pent-up demand for buses. We thought we might avail ourselves of that market if we could break into it.

Mr. McHUGH. Did you first approach the Greyhound Co. to try to interest them?

Mr. PERELLE. I am not familiar with the details of how that came about. At that time I was vice president in charge of operations, and my job came in mainly in the design and development of the product rather than contractual arrangements. I believe that the Greyhound people approached us.

Mr. McHUGH. And then did you begin plans jointly with Greyhound to design and develop a bus for them?

Mr. PERELLE. That's correct.

Mr. McHUGH. How far along did those plans proceed?

Mr. PERELLE. Oh, they only went into the very preliminary stages, and at that time again I was informed we dropped the project because we found out that there were some sales commitments made by Greyhound to General Motors.

Whether they were written or otherwise, I don't know. But they would have to have General Motors' permission to buy these buses from us in the event General Motors could not furnish them.

Mr. McHUGH. Were you told by Greyhound officials that it would be necessary for them to get General Motors' permission in order for them to do business with you?

Mr. PERELLE. I can't answer that specifically. That was a little out of my bailiwick.

As I say, I was only on the manufacturing and design end, so the contractual and sales problems were never any of my responsibility, so I don't know just exactly how or what the details of that were.

Mr. McHUGH. Well, who would have handled the contractual and sales problems in connection with this project?

Mr. PERELLE. I think this was handled by a man by the name of Mr. Brandt, who has since passed away. He was my particular contact at that time.

Mr. McHUGH. That would have been Mr. Brandt who relayed to you this information that Greyhound would have to get the permission of General Motors in order for them to do business with you?

Mr. PERELLE. Yes. It was about that time we dropped the whole project.

Mr. McHUGH. So you dropped the project entirely?

Mr. PERELLE. Yes.

Mr. McHUGH. Did Consolidated Vultee then ever go into the bus field?

Mr. PERELLE. Oh, yes. Consolidated Vultee bought the ACF-Brill Co. from the American Car & Foundry Co. as a postwar project in 1945 or 1946.

Mr. McHUGH. This was subsequent, then, to the times when you had designed this bus for Greyhound?

Mr. PERELLE. Oh, yes. This was actually after the war that they bought the ACF-Brill Co. from the American Car & Foundry Co., the same block of stock, the same controlling interests that was eventually sold to the Allen Co., investment bankers, in New York.

Mr. McHUGH. Mr. Perelle, if the Greyhound Co. had such contracts with General Motors, why did they negotiate with you, in the first place, for you to manufacture a bus for them?

Mr. PERELLE. I don't know.

Mr. McHUGH. Don't you have any idea?

Mr. PERELLE. Well, I think any operator of buses would like to have the advantage, I suppose, of new and improved thinking, new and improved designs.

We were going to apply aircraft techniques to the design of buses, and we were going to put an air-cooled motor in this job, which had never been done before. It had many appeals from a straight new product point of view. I don't know whether that answers your question or not.

Mr. McHUGH. Are you saying that they really wanted to avail themselves of the advantages of competition?

Mr. PERELLE. Well, I don't know whether that is quite right. At least, here was a new thought and a new approach to an old problem. I think, by and large, an aircraft company could make a substantial contribution from a design point of view, having worked in light metals all these years and learned a lot about how to fabricate them and how to use them.

One of the big problems on buses is the weight restrictions on these highways, and if we could get around some of those weights that are inherent in big buses, we would have a great advantage in load-carrying capacity.

Mr. McHUGH. Do you think, Mr. Perelle, that one of the reasons Greyhound may have been negotiating with you was in order to get a

yardstick to compare the price which General Motors was charging them for their buses?

Mr. PERELLE. I wouldn't know about that. I understand that other aircraft companies were also invited to design buses at a competitive price. There was probably a great deal of——

Senator O'MAHONEY. Invited by whom?

Mr. PERELLE. By Greyhound.

Senator O'MAHONEY. Will you pardon me, Mr. McHugh, just a minute? Do I understand that you are telling the committee that your company was invited by Greyhound to design a bus with several advantages, including an air-cooled engine, advantages which seemed to be possible to develop by reason of the experience of the airplane industry, and that it would therefore be possible to build a lighter bus, to comply with the rules of the road in various cities and States; right?

Mr. PERELLE. Yes.

Senator O'MAHONEY. Do I understand that the project was abandoned after the preliminary discussion of drawing plans for such a bus; is that right, sir?

Mr. PERELLE. We went some beyond the preliminary. We had some physical development work, just in the very preliminary stages.

Senator O'MAHONEY. You gave attention to it. What was the reason stated to you for the abandonment?

Mr. PERELLE. The principal reason stated to me was that we would be unable to participate in this market, which looked so attractive to us, without permission from one of our principal competitors at that point, who would become one of our principal competitors.

Senator O'MAHONEY. Yes. In other words, your testimony was that Greyhound had some sort of a commitment that it couldn't buy such a bus as you were designing unless it first had the permission of General Motors?

Mr. PERELLE. That was my understanding; yes, sir.

Senator O'MAHONEY. That is to say, Greyhound was bound, according to your understanding, to give a first call to General Motors. Was it to build the same type of a bus?

Mr. PERELLE. I don't know how to answer that, Senator. I believe that they had, certainly, the opportunity to design whatever type and kind of bus Greyhound wanted.

Senator O'MAHONEY. Has an air-cooled engine ever been designed and used on bus transportation?

Mr. PERELLE. Very few of them. We eventually put some air-cooled engines in buses, which are still running, doing, I think, a very satisfactory job, but not in any large numbers.

Senator O'MAHONEY. Do you think that your design and your plan and the new air-cooled engine were mechanically sound developments?

Mr. PERELLE. Oh, yes.

Senator O'MAHONEY. Economic?

Mr. PERELLE. Oh, yes.

Senator O'MAHONEY. I mean, they could be operated at a reasonable cost?

Mr. PERELLE. Yes. I believe they had some basic inherent advantages.

Senator O'MAHONEY. Did they have any defects which would call for their rejection?

Mr. PERELLE. None that I know of, Senator.

Senator O'MAHONEY. Did Greyhound ever express to you any note of rejection of the plans on which you were working?

Mr. PERELLE. No.

Senator O'MAHONEY. What type of engine does Greyhound now use?

Mr. PERELLE. General Motors diesel. They are standardized on diesel equipment.

Senator O'MAHONEY. So the Greyhound is standardized on the diesel engine produced by General Motors, which had some sort of a contract whereby the Greyhound could not use the air-cooled engine without the permission of General Motors?

Mr. PERELLE. That is substantially my understanding of the situation, and that is substantially the reason we abandoned the project.

Senator O'MAHONEY. Well, that might be interpreted as meaning that the power of General Motors was such that it could prevent the development of a better engine than the diesel with these bus companies, whose purchasing policies apparently it controlled.

Mr. PERELLE. It could be, I presume. I hadn't thought of it in that light, but it could be.

In entering a bus business, such as we were attempting to do at that point, it was obvious that we didn't know very much about the bus business, as such, and we were learning very fast.

Mr. McHUGH. Mr. Perelle, besides the Consolidated Vultee, with whom you are associated at that time? You mentioned that another aircraft company considered making a bus for Greyhound.

Mr. PERELLE. I understand that that was the condition; yes.

Mr. McHUGH. And who was that?

Mr. PERELLE. Douglas Aircraft Co.

Senator O'MAHONEY. It occurs to me, Mr. McHugh, that I ought to give him an opportunity to interpret a sentence used just a while back. I was going to allow it to go without comment.

You said that when you began to deal with these bus matters, you didn't know very much about the bus business, but that you learned very rapidly?

Mr. PERELLE. That is a comparative statement, Senator.

Senator O'MAHONEY. I take it you were not talking about your mechanical understanding?

Mr. PERELLE. That, too.

Senator O'MAHONEY. That, too?

Mr. PERELLE. Yes, sir.

Senator O'MAHONEY. I thought you were thinking that you weren't aware—well, put it in your own words.

Mr. PERELLE. All users of buses, big or small, Senator, are designers in their own right, and that is one of the real serious problems in the bus business.

I started to say to you that we did design and develop a deck and a half bus for one of our customers. We did that in our own shops.

To show you why I say other people are bus designers in their own right, Greyhound designed and built in their own shops their own deck and a half, which subsequently was turned over for production to General Motors. Now, there is a great controversy about who designs a bus at this point.

Mr. McHUGH. Mr. Perelle, do I understand that the Douglas Aircraft Co. at that time also was making, entering into plans for designing, a bus for Greyhound?

Mr. PERELLE. In direct competition with us.

Mr. McHUGH. Did the Douglas Co. also discontinue its plans because of the contractual arrangements between General Motors and Greyhound?

Mr. PERELLE. I don't know the reasons, but I do know they discontinued their plans.

Mr. McHUGH. Has the Douglas Co. ever manufactured buses?

Mr. PERELLE. Not to my knowledge.

Mr. McHUGH. They never, then, went into the field later on?

Mr. PERELLE. No.

Mr. McHUGH. Did you ever discuss the situation with officials of Douglas?

Mr. PERELLE. No.

Mr. McHUGH. You just know that the fact was they didn't manufacture buses later on?

Mr. PERELLE. That's right.

Mr. McHUGH. Mr. Perelle, is the Greyhound Bus Co. the single largest purchaser of the intercity type buses?

Mr. PERELLE. Oh, yes, by far.

Mr. McHUGH. So that if a manufacturer of buses couldn't get access to this market, this would be an extreme deterrent?

Mr. PERELLE. A very serious deterrent.

The volume alone of their requirements is such as to enable an operation to have a great deal of continuity and stability.

Mr. McHUGH. Mr. Perelle, besides the type of commercial practices which you have described here, are there any other special advantages which the General Motors Corp. enjoys in the bus business because of its size?

Mr. PERELLE. I think there are a great many advantages that flow to a large corporation just because it is a large corporation.

Mr. McHUGH. In context of this industry, then, would you explain that?

Mr. PERELLE. The control of freight on a reciprocity basis is a very substantial influence.

Mr. McHUGH. Will you explain what you mean by that?

Mr. PERELLE. We didn't ship a great deal of stuff over the railroads, and General Motors, of course, shipped a great deal.

Mr. McHUGH. Do bus manufacturers sell buses to railroads?

Mr. PERELLE. We had several lines that were exclusively equipped with our buses. New York, New Haven & Hartford had an exclusive line of ACF intercity equipment, Union Pacific did, Southern Pacific had substantial freight, Pennsylvania Greyhound had a substantial freight. Most of that business has just dried up.

Mr. McHUGH. Are you saying that the railroads concentrated upon General Motors because of the great volume of traffic which General Motors did with them?

Mr. PERELLE. I wouldn't know specifically why they concentrated on them, but I am sure it had a great influence on anybody's judgment.

Having had a little experience in the railroad business, I know that freight is given a great deal of consideration, and who controls freight and that sort of thing in placing orders of requirements. That is

historical. I think it is the pattern of the railroad industry for many years.

I don't think anybody has to write letters about it or influence anybody. I think it is just a pattern that has developed and has been given a great deal of consideration and a great deal of weight and influence.

Mr. McHUGH. Would you know of any specific cases in which you lost orders for buses because of the fact that the railroad preferred General Motors because of their freight business?

Mr. PERELLE. Yes; I know of one specific case that happened in my own experience, and that happens to be on the New York, New Haven & Hartford, a very small order for six buses, and we lost that.

Mr. McHUGH. When was this?

Mr. PERELLE. Probably in 1950 or 1951. I was told by our people who were handling that job that the purchasing department of the New York, New Haven & Hartford Railroad told them that there were so many freight cars a week involved in this order, and that he, as an individual, wasn't going to take the responsibility of crossing that up.

I just recite that as a statement of fact, and I don't think anybody had to put any pressure on anybody to have him realize that there is a reciprocity problem in this freight picture.

Mr. McHUGH. And that bus business, then, went to the General Motors Corp.?

Mr. PERELLE. That is the only specific case that I know of. It is one that I had some experience with.

Mr. McHUGH. Did you have any other reason to believe that reciprocity plays an important part in this picture?

Mr. PERELLE. Just my long background and experience with the railroad business. I know that that is the history of it. It can't be otherwise.

Mr. McHUGH. Did you ever consider associating yourself with any railroad company, with any locomotive manufacturer?

Mr. PERELLE. You mean personally?

Mr. McHUGH. Yes.

Mr. PERELLE. Yes; I did.

Mr. McHUGH. Will you explain the circumstances of that?

Mr. PERELLE. I discussed the presidency of American Locomotive for quite some time, with the people who were responsible for selecting the president of that company.

Mr. McHUGH. You were invited to become president of American Locomotive?

Mr. PERELLE. That's correct. I was invited to discuss the possibilities of becoming president.

Mr. McHUGH. And you decided——

Mr. PERELLE. I want to make it very clear we never got down to a specific situation of yes or no on it.

Mr. McHUGH. Did you decide against going ahead with that?

Mr. PERELLE. I decided definitely against going ahead with that.

Mr. McHUGH. What was your principal reason?

Mr. PERELLE. Well, I looked into the history of the background of the locomotive industry, and had many friends in the railroad business who told me that the pattern there was pretty well set and that the people whom I talking with, according to them, the volume of business was down and pretty well controlled, I guess.

And after looking over subsequent orders and requirements from the railroads for various locomotives, I saw the pattern was pretty realistic. General Motors controlled about 60 percent of the locomotive business, and the remainder was divided between the three other companies, Fairbanks, Baldwin, and American Locomotive, a principal deterrent to me in studying further associating with American Locomotive.

Mr. McHUGH. It was your feeling that General Motors shared this large volume of the locomotive business to a large extent because of the freight situation?

Mr. PERELLE. It was my feeling that that was very substantially true, yes.

Mr. McHUGH. Did you ever have occasion to discuss, Mr. Perelle, this question of possible use of freight or traffic as a weapon to get other business with any officials of the General Motors Corp.?

Mr. PERELLE. No, I never have.

Mr. McHUGH. Were there any other advantages which you can describe which you think General Motors Corp. enjoyed in the bus field over its smaller competitors?

Mr. PERELLE. Advantages, I don't quite understand that question.

Mr. McHUGH. Because of its size. Does the General Motors Corp. maintain warehouses throughout the United States?

Mr. PERELLE. Oh, yes.

Mr. McHUGH. For servicing equipment?

Mr. PERELLE. Oh, yes, sir. We in ACF-Brill also maintained warehouses and parts depots throughout the country. I believe most of the larger manufacturers did.

But that becomes a very expensive problem, and as our volume decreased, we were forced to eliminate, in many cases, those warehouses and the personnel involved, as a means of keeping our costs in balance.

That automatically, I would think, gives a larger corporation with the ability to maintain parts depots and stuff scattered throughout the country, just a natural advantage basically. A parts man or an operator who has his parts next door is certainly happier than a man who has to get them from California or Philadelphia, as the case may be.

Mr. McHUGH. Even though the bus business may be declining then, a corporation like the General Motors Corp. wouldn't be as hard hit as you, inasmuch as it is required to maintain warehouses to service its passenger-car business?

Mr. PERELLE. All of its products, bus parts, all of its diesel engines that are in the field. They have substantial parts depots and things like that scattered throughout the country, and can spread the burden of that cost over a large volume of business, whereas we had to maintain it strictly for the bus business.

Mr. McHUGH. Mr. Perelle, is it necessary to finance a fairly large volume of this bus business?

Mr. PERELLE. We experimented with that at American Car & Foundry-Brill. Yes, financing is a very serious problem in all this, and ability to carry that paper is a real financial problem.

Mr. McHUGH. Are there any reasons why that is a particularly tough problem in this industry?

Mr. PERELLE. Yes. I think specifically that the industry as a whole has been declining for many years, and the earning power of these various operations has been going downhill. Very few, if any, of the transit companies now are making any money.

When they are not making money, the banks don't seem to like to loan you money, and particularly if they have to loan it to you on a long-term basis.

Most of the paper that I had experience with was quite long-term by comparison, some of it 7 or 8 years, which is a long financial period for bus equipment in a declining revenue industry.

Mr. McHUGH. I understand that it is difficult to get financial institutions interested in financing over this long period of time?

Mr. PERELLE. We were never able to get anyone interested in it ourselves, and we had to take the job on as a direct obligation of the Brill Co., and the Brill Co. was not sufficiently large to handle a great volume of that type of financing.

I think that we handled approximately \$5 million at one time, but that was about the limit of our ability to finance.

Mr. McHUGH. Do you know how the General Motors Corp. finances any of its bus business?

Mr. PERELLE. No; I do not.

Mr. McHUGH. Are you familiar with Yellow Manufacturing Acceptance Corp.?

Mr. PERELLE. No.

Mr. McHUGH. Is the General Motors Corp., because of its size, in any better position then to meet this problem of financing?

Mr. PERELLE. I would think that they were in a substantially better position than we would be to work out these financial problems.

Mr. McHUGH. Do you happen to know whether or not the General Motors Corp., or its financing company offers more liberal financing terms than either you would be able to offer or that you would be able to obtain from private banks?

Mr. PERELLE. I know that they were able to not offer more liberal but a longer period of financing than we were able to offer or able to arrange, and that is a very valuable thing to the operator, because his financing goes into the rate structure.

You probably know a lot more about those details than I do, but that becomes a cost item in his rate pattern, and the longer he can stretch out his financing, the better off he is.

Mr. McHUGH. Would this question of financing be so important that in some cases it might determine whether you or General Motors Corp. got the business?

Mr. PERELLE. Oh, yes; very definitely.

Mr. McHUGH. Do you know of any specific cases in which your corporation lost the business to General Motors because GM offered more liberal financing by way of longer period of repayment?

Mr. PERELLE. I don't know of any specific cases I could put my finger on. There were many cases that we lost because of our inability to finance; there is no question about that.

Mr. McHUGH. You lost that business to the General Motors Corp.?

Mr. PERELLE. We lost the business. I can't specifically say it went to General Motors. It was just because of our inability to finance it that we lost the business.

In all cases it doesn't go to General Motors. There were several other competitors that were trying to finance this business probably on the same basis that we were, without the ability to raise the money.

Mr. McHUGH. Mr. Perelle, was ACF-Brill more successful in competing with the General Motors Corp. when you were attempting to obtain Federal Government business than when you were selling to these local transit companies?

Mr. PERELLE. Oh, yes; we were very successful.

Mr. McHUGH. How do you explain that?

Mr. PERELLE. Well, we bid for these jobs competitively, and to a specification, and were able to obtain the business.

Mr. McHUGH. Was the Government satisfied with your product?

Mr. PERELLE. We were able to satisfy the Government and make a profit to boot.

Mr. McHUGH. How did your price compare with the General Motors Corp.?

Mr. PERELLE. It was always competitive, always competitive. We had no problems in that.

Mr. BURNS. That's all we have.

Senator O'MAHONEY. Are you ready to present another witness?

Mr. BURNS. Yes; we have another witness.

Senator O'MAHONEY. What will be the schedule now? It is 20 minutes of 1. There are reasons why I would rather not have an afternoon session.

Mr. BURNS. Mr. Green would probably take until about 1 o'clock or maybe a few minutes over and we have one other witness, Mr. Butler. That is all we have. We had four for today. Mr. Bransome won't be here until probably Friday morning.

Senator O'MAHONEY. Very well. Then will you call Mr. Green?

Thank you very much, Mr. Perelle. I was very much interested in your testimony.

Proceed, Mr. Burns.

Mr. BURNS. Mr. Stanley L. Green of the Southern Coach Manufacturing Co., Evergreen, Ala. Mr. Green, are you connected with the Southern Coach Manufacturing Co. of Evergreen, Ala.?

STATEMENT OF STANLEY L. GREEN, PRESIDENT, SOUTHERN COACH MANUFACTURING CO.

Mr. GREEN. Yes.

Mr. BURNS. And what is your connection with that company?

Mr. GREEN. President.

Mr. BURNS. And what is your financial interest in it?

Mr. GREEN. I own about 70 percent of it.

Mr. BURNS. Did you organize that company?

Mr. GREEN. Yes.

Mr. BURNS. In what year?

Mr. GREEN. It was first organized as a partnership in 1941. I bought out the partner in 1942. It was made a corporation in 1946.

Mr. BURNS. Were you in the bus business prior to organizing this company?

Mr. GREEN. Yes, sir; I worked for the White Motor Co. and ACF-Brill.

Mr. BURNS. And how many years have you been connected with the bus-manufacturing business?

Mr. GREEN. I was in the sales, sir, in both the White and ACF-Brill. I was not in the manufacturing end.

Mr. BURNS. Over how many years have you been connected with the bus-manufacturing industry?

Mr. GREEN. Oh, since 1927, about 28 years.

Senator O'MAHONEY. I understand that yours is an independent company?

Mr. GREEN. That's right, sir.

Senator O'MAHONEY. You own 70 percent of the stock?

Mr. GREEN. That's right, sir.

Senator O'MAHONEY. It is not a company held by any other company?

Mr. GREEN. No, sir.

Senator O'MAHONEY. And it has no holding company?

Mr. GREEN. Well, we have a little parts company that is a separate corporation, that's all.

Senator O'MAHONEY. Very good, sir.

Mr. BURNS. Now will you tell us what type of bus you make?

Mr. GREEN. We make what is known as a city transit bus, and that has varied somewhat to a suburban bus, short hauls.

Mr. BURNS. And is that bus of the type which is used in the city of Washington by Capital Transit?

Mr. GREEN. The same type; yes.

Mr. BURNS. The same type bus. Now how much of the bus do you build in your own plant?

Mr. GREEN. We fabricate and build all of the body and we buy engines, transmissions, and power lines, you might say, and we do manufacture our own seats and windows that most manufacturers don't. But we don't manufacture any of the heavy mechanical equipment.

Mr. BURNS. And is that practice of buying certain parts for the buses also engaged in by other bus manufacturers?

Mr. GREEN. To more or less of an extent.

Mr. BURNS. Is there any particular class of customers that you cater to or do you endeavor to sell to the whole country?

Mr. GREEN. No; we restrict our operations primarily to the South and Southwest. We have a few buses in Kansas and Missouri, but very few.

Mr. BURNS. With which companies do you compete for the type of customers that you are seeking?

Mr. GREEN. Now there is only four, and that is GM, Flxible, and Mack that have the heavy-duty buses, and that's about all we build.

Senator O'MAHONEY. You said four.

Mr. GREEN. Yes.

Senator O'MAHONEY. You named three.

Mr. GREEN. GM, Flxible, Mack, and ourselves.

Mr. BURNS. Now, are your buses of the same type which General Motors builds for city use?

Mr. GREEN. Yes, sir.

Mr. BURNS. And is your bus comparable to the bus made by these other companies, Mack and Flxible?

Mr. GREEN. Yes, sir.

Mr. BURNS. And what type of engines do you use?

Mr. GREEN. We use 2 or 3 different makes of what is termed a horizontal engine, an engine that is mounted underneath the floor. That is built in diesel by the Cummins Co. of Columbus, Ind., and by Fageol Products of Leland. And then in the gas engines, we use the Fageol engine and two engines built by Waukesha Engine Co. of Waukesha, Wis.

Mr. BURNS. What is the capacity of your plant?

Mr. GREEN. Roughly a bus a day; about 200 a year is our maximum capacity.

Mr. BURNS. How do the prices of your buses compare with the prices of your competitors' buses?

Mr. GREEN. We are usually from 5 to 6 percent lower.

Mr. BURNS. We have a chart which shows—I think we might have these charts put in the record.

Senator O'MAHONEY. One was put in this morning.

Mr. BURNS. Yes, and this one I think we might put in. It is dated November 11, 1955, Percent of Buses (Intercity and City) Built by the Various Bus Manufacturers.

Senator O'MAHONEY. What is the source of the information contained in that chart?

Mr. BURNS. This is supplied by Mr. Butler of Flexible and it is from the Standard Statistics of the Bus Manufacturing Co. He will explain it when he takes the stand.

Senator O'MAHONEY. Very good.

(The chart above referred to is as follows:)

Percent of buses (intercity and city) built by the various bus manufacturers, 1950-55

	1950		1951		1952		1953		1954		1955 (9 months)	
	Num- ber	Per- cent	Num- ber	Per- cent	Num- ber	Per- cent	Num- ber	Per- cent	Num- ber	Per- cent	Num- ber	Per- cent
GM.	2, 185	51.3	3, 508	52.6	2, 366	66.7	2, 579	71.8	2, 711	77.3	2, 043	80.9
Flexible	196	4.6	241	3.6	142	4.0	328	9.1	496	14.1	195	7.7
Mack	504	11.8	676	10.1	156	4.4	114	3.2	68	1.9	115	4.6
Fitzjohn	99	2.3	95	1.4	60	1.7	100	2.8	21	.6	54	2.1
Beck	123	2.9	77	1.2	61	1.7	50	1.4	36	1.0	38	1.5
Southern	68	1.6	32	.5	30	.8	91	2.6	117	3.4	36	1.4
Marmion-Herrington	143	3.4	265	4.0	114	3.2	101	2.9	56	1.6	22	.9
Beaver	21	.5	34	.5	12	.3	16	.4	2	.1	.....	.....
ACF	337	7.9	327	4.9	130	3.7	71	2.0	.....	.....	.....	.....
Transit	15	.4	464	7.0	21	.6	23	.6	.....	.....	.....	.....
Twin	265	6.2	626	9.4	152	4.3	12	.3	.....	.....	.....	.....
White	78	1.8	228	3.4	262	7.4	106	2.9	.....	.....	.....	.....
Aerocoach	223	5.3	92	1.4	41	1.2	.....	.....	.....	.....	.....	.....
Crown .....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	23	.9
Total	4, 257	100.0	6, 665	100.0	3, 547	100.0	3, 594	100.0	3, 507	100.0	2, 526	100.0

Mr. BURNS. This shows the General Motors percentage of the market increased from 1950 to 1955, and it also shows the percentage of the market which your company, Southern, had, which shows an increase of your percentage of the total market, although the amount of buses was not in the same ratio to the total production as was the increase in percentage.

Now will you tell us what, if any, problems you have in meeting the competition of the General Motors Corp. in the sale of buses?

Senator O'MAHONEY. Mr. Burns, if I read this correctly, the Southern Co. increased its bus production from 1.6 percent in 1950, or rather

decreased its business from 1.6 in 1950 to 0.5 in 1951, to 0.8 in 1952, then increased in 1953 to 2.6, and in 1954 to 3.4, while in the 9 months of 1955 dropped off to 1.4, so that the increase of which you are speaking is the increase between 1950 and 1953 and 1954 respectively.

Mr. BURNS. Yes.

Mr. Green, in 1951 and 1952, in addition to these buses shown on this chart, did you manufacture another type of bus for the Government?

Mr. GREEN. Yes; we had practically our capacity in Government contracts for those 2 years. We built 335 buses, I believe.

Mr. BURNS. And then for 1953, 1954, and 1955, you were building the transit buses in competition with the General Motors, Flxible and Mack transit buses?

Mr. GREEN. That's right, yes, sir.

Mr. BURNS. What problems have you encountered in the sale of buses in competition with the General Motors buses?

Mr. GREEN. I would say that our two problems, one of course is that we are a small company, our total assets are around a half million dollars, and there were so many people that were so much bigger than we were that went out of business, there was quite a feeling that we couldn't last either, and no one wants to buy a bus that is going to be an orphan, and I think that has cost us quite a bit of business.

We have lost some business on our inability to offer any financing because we are not in a position to do any financing. We need all of our capital for our operations, and that has cost us some business.

Mr. BURNS. Have you had specific instances where you could have had the business as far as the quality and price of your bus is concerned, but lost it to General Motors because you couldn't get the financing for your customers?

Mr. GREEN. We have been told that that is true. Maybe it was an excuse to keep from buying from us, but we have one deal that I think that is true—in Corpus Christi, Tex., and another in Huntington, W. Va., where they told us that they would buy our product if we could finance it.

We weren't able to do it, and since that time, I mean for the past several years, we simply don't call on customers, we don't spend money soliciting their business, unless we know that they are in a financial position to finance their buses with their local banks.

Mr. BURNS. These instances where you did endeavor to obtain the business, do you know whether they did buy GM buses?

Mr. GREEN. Yes; they did in both instances.

Mr. BURNS. Do you know the kind of terms or how the GM provides them and how it finances?

Mr. GREEN. Not specifically. It is generally understood that it is about 10 percent cash and 6 years. That possibly is at the rate of 6 percent simple interest.

Mr. BURNS. Does GM finance through this GMAC?

Mr. GREEN. That is my information; yes, sir.

Mr. BURNS. Have you run into any problem because of the time of delivery?

Mr. GREEN. Yes. That has been a factor in many cases.

We can't deliver unless it is an unusual case, we can't carry inventory to build many buses, because the inventory to build a bus is 65 percent

of the sale price, and it doesn't take but a few buses to build your inventory to such figures that the small firm can't carry.

Once we have had it happen that we would be building some buses for a customer who was in a hurry and be able to switch to another customer. That has happened maybe 2 or 3 times since we have been in business.

Mr. BURNS. And in what way does General Motors make these quick deliveries, which you cannot make; how do they get set up to make them?

Mr. GREEN. Well, they have customers they are very close to that buy in large quantities.

Mr. BURNS. What type of customers are those?

Mr. GREEN. Well, we have all been talking about National City, we might as well continue, it would be one of them.

They have the capacity of maybe 10 or 15 buses a day, and I don't think there would be any trouble to get them to switch 10 buses down here and get National City delayed 1 day on delivery. I think my customers would do that for me, I think theirs would.

Mr. BURNS. You mean if some customer wanted a small order of buses on very short delivery, you wouldn't be able to manufacture them in time, but General Motors could switch some buses from an order it already had with one of its large customers, and then postpone delivery because of its relationship with the large customer?

Mr. GREEN. That has happened; yes.

Mr. BURNS. That has actually happened?

Mr. GREEN. Yes.

Mr. BURNS. So you have lost business on that account?

Mr. GREEN. Yes.

Mr. BURNS. Now how has the problem of standardization affected your ability to sell buses?

Mr. GREEN. That has always been a problem which receives more consideration in some companies than others. There is certain economical value of having all of the same equipment because it is easier to teach your mechanics how to maintain one type of equipment than another, and it simplifies your parts inventory. How much that affects the operating costs, I don't know. It is exaggerated in a lot of instances.

Mr. BURNS. Well, that standardization would not require companies in different cities to use the same type bus, or is it more that the company in a single city might feel the need for having a standard bus and standard equipment?

Mr. GREEN. Well, that is true to this extent. In companies such as National City—we are not competitive, but the same thing applies to Greyhound.

They have a central purchasing agency, both of them, I believe, in Chicago, where they buy the normal requirements of their maintenance through that purchasing department, and then ship them to these various properties that they have in various garages.

Mr. BURNS. Well, in these cities that you do sell buses, isn't this problem of standardization just as much present?

Mr. GREEN. It works for us and against us, and we have some orders that they had our equipment, they liked it and they continued to buy it.

Mr. BURNS. To what extent do you get an opportunity to bid for business when companies need new buses?

Mr. GREEN. Each company apparently has their own way of handling invitations to bid. Most of the municipally owned properties send out requests. Some of the privately owned properties send out requests for bids.

Others apparently are not interested in what we charge for a bus or what we have in it, and that same thing not only applies to us, but to Mack and Flxible.

Mr. BURNS. Now have you any problems in connection with the purchase of the parts that you need for your buses, the parts you do get outside?

Mr. GREEN. Of course, we don't use any parts, we don't engineer any parts on our buses, that are not available to us. There are parts that are not available that we could engineer into our buses, if I make myself clear.

Mr. BURNS. Well, what type of parts are not available to you that you could use?

Mr. GREEN. I was thinking recently in the last year, couple of years, 3 years, the trend of the city bus business has been toward what is commonly termed an air ride in place of a leaf spring.

That was developed in the bus field by General Motors in conjunction with Delco-Remy, which is, I believe, also a General Motors company, I am sure it is.

No, wait a minute, it's not Delco-Remy, it's Delco Products, which is the shock absorber division, and Firestone Rubber Co., and we tried to buy that but it wasn't salable, they wouldn't sell it to us, and then we designed another one that was built, a combination of General Tire & Rubber Co. and Midland people, but recently Firestone has notified us that their part of the combination was available to us. However, Delco-Remy is still not available. We had a letter last week stating it wasn't.

Mr. BURNS. Do you have any problem in getting torque convertors for your buses?

Mr. GREEN. Well, the only problem is that all of us other than General Motors buy our torque convertors from Spicer Manufacturing Company of Toledo, and they require a larger number of torque convertors than we can handle.

In other words, we are more or less dependent, we have to stock some which we don't like to do, and then we have to depend on somebody else to give them an order that we can tie into either before or after. They don't like to run less than a hundred, and they cost two or three thousand dollars apiece.

Mr. BURNS. Are there any other problems that you have in obtaining business in competition with General Motors?

Mr. GREEN. Well, of course, financing we have already mentioned.

Mr. BURNS. Yes.

Mr. GREEN. I would say that that and the standardization and the properties that we can't sell, I mean that are tied up in some way with standardization or otherwise.

Mr. BURNS. And your market then is limited to the southern and southeastern area of the country, pretty much?

Mr. GREEN. Well, we have this problem. Any time that we sell a bus, we must have service representatives, and we are not particularly interested in getting an order from Boston for 10 buses and have to send a service representative up there in 90 days to be sure it is operating all right. We like to confine it in one territory.

Senator O'MAHONEY. Can you successfully do that?

Mr. GREEN. Well, according to this sheet, no; but we think normally we could.

Senator O'MAHONEY. Normally you could?

Mr. GREEN. Yes.

Senator O'MAHONEY. And when you say "normally" what do you mean?

Mr. GREEN. Well, we don't think that there has been in the last 4 or 5 years a normal market, sir.

If you will note these figures, they don't go back that far, I see, but in 1947, 1946, 1947, and 1948 the industry was starving for buses. Their manufacture had been restricted for the last 4 or 5 years during World War II, and all of them bought very heavily, and buses that were bought during that period haven't yet started being replaced, and on top of that the buses in use have been retiring because of the transit business being in a decline, to where the buses that they bought previous to that have been retired without needing to be replaced.

And we think that beginning next year probably, and some of it is showing this year, that we will get back to a larger replacement.

Senator O'MAHONEY. The falling off of bus traffic in cities is affecting the bus business?

Mr. GREEN. Oh, yes.

Senator O'MAHONEY. To what extent, would you say?

Mr. GREEN. Well, the whole industry, sir, is off. Possibly last month it would show 5 percent over a year ago, and that has been going on for the last 3 or 4 years to where it is down close to 40 or 45 percent.

Senator O'MAHONEY. And why is the industry going down? Is it because people are traveling more by other means of conveyance?

Mr. GREEN. That in my opinion is the main reason, sir.

Senator O'MAHONEY. And I assume that the conveyance is the personally owned automobile?

Mr. GREEN. That is true.

Senator O'MAHONEY. What do you see ahead for the industry?

Mr. GREEN. I can't see anything other than about 3,000 units a year where it once produced as many as 8 or 10.

Senator O'MAHONEY. You produce 200 a year, that is your capacity?

Mr. GREEN. That is about what we would like to produce; yes.

Senator O'MAHONEY. Do you think that the competitive situation is such that a small company like yours, capable of producing 200 a year, can continue to exist?

Mr. GREEN. Yes.

Senator O'MAHONEY. Are you on the tolerance list, as it were?

Mr. GREEN. I don't know how to interpret that, sir.

Senator O'MAHONEY. Well, could you be put out of business because of these disadvantages that you have spoken of, the disadvantage of financing?

When a local bank can't finance your customer and you can't, that is a disadvantage.

Mr. GREEN. Yes.

Senator O'MAHONEY. It has deprived you of some business.

Mr. GREEN. Well, I might answer that in this way: That we are now attempting to diversify our operation and get other items than bus business to carry our general overhead in case of these lulls or valleys, you might say.

Senator O'MAHONEY. Are you succeeding?

Mr. GREEN. To some extent.

Senator O'MAHONEY. Well, I wish you luck.

Mr. GREEN. Thank you, sir.

Senator O'MAHONEY. Mr. Burns tells me he has no further questions, Mr. Green.

Mr. GREEN. Thank you gentlemen very much.

Senator O'MAHONEY. We are very grateful to you for having appeared. Thank you so much.

Mr. BURNS. Mr. Butler.

Senator O'MAHONEY. You may proceed.

Mr. BURNS. Mr. Butler, what is your position with Flxible Co., of Loudonville, Ohio?

**STATEMENT OF THOMAS P. BUTLER, VICE PRESIDENT, THE
FLXIBLE CO.**

Mr. BUTLER. I am vice president.

Mr. BURNS. And how long have you been connected with that company?

Mr. BUTLER. About 25 years.

Mr. BURNS. What products do they make?

Mr. BUTLER. Well, principally buses, some other products, but that is the major part of our business.

Mr. BURNS. And what type of bus do they make?

Mr. BUTLER. We make both intercity and city type coaches, sir.

Mr. BURNS. Have you always made both types, or have you recently taken on one of those types?

Mr. BUTLER. In 1953 we took over the manufacture and sale of Twin Coach, that being the first time we were in the transit end of the business.

Mr. BURNS. And what were the circumstances and the arrangements under which the Twin Coach operation were taken over, that is, manufacture of buses?

Mr. BUTLER. Well, the urban bus business, or the transit bus business, had been declining and getting very spotty in the year or two prior, 3 or 4 years prior to 1953, and the Twin Coach Co. thought that perhaps we would be interested in getting over and getting into the transit business without having to start from the ground up, and add that to our intercity business and make what, to them, was not a good business any longer, a satisfactory line to keep in operation.

Mr. BURNS. And at that time, what was the status of your business in the intercity type of bus?

Mr. BUTLER. It was getting also more spotty for an entirely different reason than the transit business was, in my opinion.

Mr. BURNS. And how much of the bus does your company manufacture?

Mr. BUTLER. We manufacture the body, we buy component parts, axles, wheels, brakes, engines, transmissions, and so forth.

Mr. BURNS. And from whom do you get these parts that you purchase on the outside?

Mr. BUTLER. Timken for axles, Westinghouse for brakes, engines we get from Fageol Motors, Cummins, some from the Buick Motor Co. We have used some Chevrolet, and we have used some GM diesels.

Mr. BURNS. Now, with respect to the intercity type of bus, have

there been any changes in the nature of the operating companies since you first went into this business in the early 1930's?

Mr. BUTLER. Yes, there have been very great changes.

Mr. BURNS. Will you tell us what those are?

Mr. BUTLER. Primarily a reduction of the total number of operators in the United States by mergers, until, I would say, now there are perhaps not over about a tenth as many individual operations in the United States on intercity buses as there were 15 or 20 years ago.

Mr. BURNS. Well, now, before these companies began to merge, what was the market situation for these bus manufacturers?

Mr. BUTLER. Well, the market supported a number of more manufacturers than are in business today.

Mr. BURNS. And to what extent has the change in method of operating the bus companies affected the number of manufacturers in the industry?

Mr. BUTLER. Well, the control of purchasing is centered in a lot fewer places, and as a consequence the larger and more aggressive companies are able to obtain it, the smaller companies have less chance. By "smaller companies," I mean us, too.

Mr. BURNS. Over the years from 1936 up to 1951, what was the maximum number of buses, intercity buses, that your company built in any one year?

Mr. BUTLER. I think about between eight and nine hundred.

Mr. BURNS. Did this competitive picture change any after the war, in intercity buses?

Mr. BUTLER. In intercity buses?

Mr. BURNS. Yes.

Mr. BUTLER. Only to the extent that there were a great number of mergers immediately after the war.

Mr. BURNS. And how did that affect the number of companies making intercity buses?

Mr. BUTLER. Well, I don't know that it affected the number of companies particularly that were making intercity buses, if you want to confine it to intercity. Most of the companies who made intercity buses are still in business in some manner.

Mr. BURNS. What was the nature of your competition for intercity buses with the General Motors Corp.?

Mr. BUTLER. Well, they, of course, are the principal competitor and always have been, so far as we were concerned, in the intercity buses.

The fact that General Motors has a virtual monopoly, perhaps is the word, on the Greyhound business, makes it possible for us to obtain some business or helps to make it possible because of their tie-up with Greyhound. The Trailways Cos. would prefer, everything else being equal, not to have to deal with General Motors, I would say, that is my opinion, anyhow, because of their tie-up with Greyhound and their direct competition with Greyhound.

Mr. BURNS. And do you sell to Trailways?

Mr. BUTLER. Yes, we do. They are our largest customer.

Mr. BURNS. Do you sell buses of the same type which Greyhound uses?

Mr. BUTLER. Well, it is hard to say the same type. We sell Trailways buses that they use in competition with the buses they buy from General Motors.

Mr. BURNS. Just what did you take over from Twin Coach when you took over their transit bus business?

Mr. BUTLER. We took over their inventory, their tools, their engineering drawings, and some of their personnel, their key personnel.

Mr. BURNS. Have you found that the competition in the city transit coach business is different from the type of competition you had in the intercity bus business?

Mr. BUTLER. As far as we are concerned, we have found it very different; yes.

Mr. BURNS. And would you tell us what the problems are that you have encountered in the city bus business?

Mr. BUTLER. Well, our problem, boiled down to one sentence, is: General Motors. That is our really only competition, serious competition. Mr. Green's company is, in some instances, but nationwide, in Canada and other places, they are many times the main competition, GM.

Mr. BURNS. Will you tell us some of the problems you have run into in competing with GM?

Mr. BUTLER. Long-term financing, which we cannot match.

Mr. BURNS. Will you tell us just how that affects you, the financing?

Mr. BUTLER. The bus operators, by and large, are not strong financially, they haven't been making money, although many of them have been, let's say, breaking even.

Therefore, when they need financing, and by the term "financing," I mean, say, 10 percent down and 6 or 7 years, the only way that paper can be handled is for the manufacturer, the strength of the manufacturer's name, on the paper with the bank. In our case, we can't handle a lot of those deals because of our size as compared with GM.

Mr. BURNS. Does GM do that through banks or through its own financing division, GMAC?

Mr. BUTLER. I couldn't answer positively, but it is my understanding they use GMAC.

Mr. BURNS. Do you know of any specific instances where you have lost business to GM because they were able to offer better financing terms than you could?

Mr. BUTLER. Yes; there have been specific instances. I can't tell you the case offhand, but we have had cases where we had the order and were unable to finance it, and it was ultimately turned back and they bought GM.

Senator O'MAHONEY. When you do carry on financing operations, what is your source?

Mr. BUTLER. Over the past years, mostly GMAC, which is a division or a wholly owned subsidiary, I guess, of General Motors. We have used others. We have used banks also, but in a number of transactions, I would say back over the last 10 or 15 years, most of them have been handled through GMAC.

Senator O'MAHONEY. Most of it has been handled by GMAC?

Mr. BUTLER. Yes.

Senator O'MAHONEY. If GMAC didn't handle it, what would be your position?

Mr. BUTLER. We have had instances where GMAC turned down deals that we offered them, and they were in turn sold by General Motors and financed by them on the deal, sometimes on even longer

terms than we would have been able to get for the customer. As I say, I can't recall at the moment the specific operations, but the records are in our files.

Senator O'MAHONEY. To what extent have your financing deals been handled through local banks?

Mr. BUTLER. In the last couple of years, a large percentage of them. Practically all of the intercity coaches that we sell to Trailways are financed through banks in the area in which the coaches operate.

Senator O'MAHONEY. At large percent?

Mr. BUTLER. Yes, in the last couple of years.

Senator O'MAHONEY. How large a percent?

Mr. BUTLER. Of all of the finance deals in the last 2 years, I would say that 75 percent, or more, of them have been handled by local banks on intercity coaches. It is not true of transit coaches.

Senator O'MAHONEY. What is the trend of the source of financing? Some of the other witnesses this morning seemed to give me the idea that it was becoming more and more difficult for our local banks to finance such projects.

Mr. BUTLER. I think it is definitely becoming more difficult. I might qualify that and say that with the very large operations, such as Chicago, which is our largest individual buyer of transit coaches, they finance through the Harris Trust Co. in Chicago. That kind of operations, or some of the other very large cities, can usually get the proper terms of financing by a bank in their city.

I would say that the medium and smaller cities have much more difficulty in doing that, and also, we are now beginning to find in going further than the low downpayment and the long term to some of the cities asking for the lease of equipment rather than the outright purchase, which presents an even more difficult problem of financing, as far as we are concerned.

Senator O'MAHONEY. So that we have a situation which tends to concentrate at least this portion of the banking business in the larger communities and with the larger banks and financing companies.

Mr. BUTLER. I would say so; yes, sir.

Mr. BURNS. In connection with this GMAC financing, where you were unable to obtain terms liberal enough to make the sale, and GM took the order for its bus division, was that financed through YMAC?

Mr. BUTLER. It is my understanding they have a finance company handling the truck and coach division, called YMAC, Yellow Manufacturing Acceptance Corp.

Mr. BURNS. And that provides more liberal terms for financing sales of General Motors buses than GMAC provides for outside companies like yours?

Mr. BUTLER. Very definitely.

I might add, however, that the GMAC division of General Motors was primarily set up for passenger cars and not the truck and bus.

Mr. BURNS. Now, in endeavoring to sell your buses, do you negotiate with the managers, the general managers, of transit companies?

Mr. BUTLER. Ordinarily our contacts are mainly with the management, yes; the active management

Mr. BURNS. Have you found any situations where the general managers were interested in your buses but the buses were purchased from General Motors?

Mr. BUTLER. Yes, sir; we have.

Mr. BURNS. Can you tell us any of the problems you have encountered of that nature?

Mr. BUTLER. You mean specific instances?

Mr. BURNS. Well, any specific instance or any general problems that you had.

Mr. BUTLER. Well, we have had a number of times every indication from the active management of several different large properties in the United States, relatively large, that they, after, in some cases, trying out demonstrators, and so on, on their properties, had recommended our coach for purchase, and in several instances substantial orders have been reversed by somebody on up in the active management of the companies, in both privately owned and municipally owned operations.

Mr. BURNS. Have you any idea as to the reasons why the judgment of the manager was not accepted in those instances?

Mr. BUTLER. We get very unsatisfactory answers in most cases, I would say. It is just they excuse themselves, they say, "Well, we put in the recommendation for this coach, but the board of directors decided otherwise." For what reason, we never can put our finger on it.

Senator O'MAHONEY. This seems to mean that the operators who actually carry on the operation of the buses and the transit companies were perfectly satisfied with your product and were ready to use it and had recommended it, but that it was turned down at a higher level?

Mr. BUTLER. That's correct.

Senator O'MAHONEY. And that higher level, was it in the community where the operating office was, or outside, so far as you know?

Mr. BUTLER. Well, the higher level referred to that I am thinking about was the board of directors in 3 or 4 cases that I have in mind. Where the influence came from on the board of directors, I couldn't say.

Senator O'MAHONEY. It might be well, Mr. Burns, to look into the boards of directors of these various companies and see what interconnections they may have.

Mr. BURNS. In the course of endeavoring to find out reasons why you would lose that business, has there been any reference made to the situation of the local bankers who are represented on the boards of directors of some of these transit companies?

Mr. BUTLER. Yes; that very frequently happens that the local bankers have representatives on the board of the transit companies.

I recall one instance where the general manager of one of the large companies in the United States told me himself that they were in the market for buses, he presumed they would buy GM buses, and that they would buy them without having to come to him a recommendation. He made the statement, "They will just go to my bankers."

Mr. BURNS. They will just go to his bankers?

Mr. BUTLER. That is what he said.

Mr. BURNS. And was he interested in your bus, as far as the quality and price was concerned?

Mr. BUTLER. Yes; he was interested, I would say.

Mr. BURNS. But he said there would be no use trying to sell them?

Mr. BUTLER. He made the remark it wouldn't make any difference what we showed him or had, they wouldn't come to him to get the buses.

Mr. BURNS. They wouldn't come to him to let him buy the buses?

Mr. BUTLER. That's right.

Mr. BURNS. Do you run into the problem of specifications set by any of these companies in endeavoring to sell them buses?

Mr. BUTLER. Yes; we do.

Mr. BURNS. Will you describe what that problem is?

Mr. BUTLER. That is one of the devices best used to determine the specific bus they want to buy. Any company of size that places orders for more than 10 buses at the time usually sends out invitations to bid.

In the invitations to bid, they specify everything from the shape of the tread on the tire, on up through, depending on how specific they want to be about what kind of a bus and whose bus they want, and in that manner it is possible to just write the specifications, so before they go out you know who is going to get the business.

A competitor trying to meet the specifications that are written around a specific bus would be out of the picture on price if he had to make all the changes required to meet those specifications.

Mr. BURNS. You mean the specifications that appear in the request for bids fit some particular manufacturer's bus and equipment, and do not fit any others?

Mr. BUTLER. In some cases, in many cases, that is correct.

Mr. BURNS. Have there been bids that you can tell us, just for purposes of illustration, which were due to the nature of the specifications, where the GM bus would fit it but your bus would not?

Mr. BUTLER. Yes, sir.

Mr. BURNS. Will you give an illustration?

Mr. BUTLER. That is usually what happens.

Mr. BURNS. What kind of a situation would that be, what kind of equipment would be asked for, which your company doesn't make or doesn't sell?

Mr. BUTLER. Oh, it wouldn't necessarily be equipment. It might be measurements, the height of the window sill from the cushion or the number of inches from the first step to the second. There are a lot of things that might be mere details on the surface, on paper, but to try to make your bus match those specifications would be something else again.

Senator O'MAHONEY. Do I understand from this answer that these differences in specification might be such as had no real effect upon the efficiency of the operation of the bus?

Mr. BUTLER. In our opinion, that's correct. For example, we think that there are certain advantages to having the engine underneath amidships as some other manufacturers have. General Motors engine is in the rear across the back of the coach.

If they specify that the engine must be in the rear across the back of the coach, if they insist on holding to that specification, you won't get any place with a bus such as ours, for instance, with the engine underneath.

Senator O'MAHONEY. There might be some difference of opinion.

Mr. BUTLER. Sure, that's right.

Senator O'MAHONEY. Based on mechanical reasons.

Mr. BUTLER. That's right.

Senator O'MAHONEY. While one or the other of those spacings would provide for more efficient operation, might it not?

Mr. BUTLER. That's correct.

Senator O'MAHONEY. My question to you was prompted by your recitation of the number of inches between the seat and the window. Would that have anything to do with the operation or the comfort of the traveler?

Mr. BUTLER. Yes; there could be arguments that there are. There could be reasons why they would specify that, for instance, and they do. That was not one out of the air.

They specify sometimes a certain distance from the seat to the window; for certain reasons some operators think it is better to have a high window so the kids can't get their arms out, and so on.

Senator O'MAHONEY. I got the impression from what you said that some of the specifications were matters of trivial detail.

Mr. BUTLER. No, I was trying to make the point that while it doesn't look like much of a difference on paper to try to change the bus, if our bus has 16 inches from the seat to the window level and Mr. Green's bus has 17½, it looks like, oh, what is an inch and a half, but if they had to meet that 17½, it is quite a change in engineering, tooling, and so on.

Senator O'MAHONEY. Well, I suppose that the purchaser of a bus has as much reason to desire a particular kind of design or a particular number of inches in a step as a housewife might desire for the fashion of the curtains she wants to put up in her living room.

Mr. BUTLER. That's right.

Mr. BURNS. Is there anything in your experience to indicate that any specifications were prepared in such a way to favor the General Motors bus?

Mr. BUTLER. Oh, yes, definitely. Lots of them will tell you they wrote the specifications because that is the kind of a bus they want. They wrote it specifically because they want the General Motors bus. Maybe for the reasons that the Senator mentioned, we don't know.

Senator O'MAHONEY. Why go to the trouble of asking for competitive bids if they knew the specifications would admit only a particular car?

Mr. BUTLER. Sometimes we wonder why, but in many instances they have to ask for competitive bidding, municipally-owned operations particularly.

Mr. BURNS. Publicly owned, municipally owned systems.

Now is the problem of time of delivery of orders one in which you are met by the particular ability of General Motors to compete?

Mr. BUTLER. Yes, we are.

Mr. BURNS. In what way does that affect you?

Mr. BUTLER. Oh, on any large orders. We are not a sufficiently large company to carry the high inventory that is required, and our suppliers, our major suppliers such as Spicer and Timken, particularly those two, axles and transmissions or torque converters require about 5 to 6 months from the time we place an order with them until we start to get delivery. Therefore, any large order that we get we have to require at least 6 months to start delivery.

Mr. BURNS. And how does General Motors have the advantage in that respect? Do they also purchase from Timken?

Mr. BUTLER. They do.

Mr. BURNS. They also purchase from Timken and Spicer, do they not?

Mr. BUTLER. Spicer up until recently. They are not using Spicer torque converters right now.

Mr. BURNS. And how do they have an advantage if they are also buying from the same supplier you are?

Mr. BUTLER. Well, I don't think they get the stuff any quicker from the supplier than we do. They probably are large enough to go out and inventory and have that on order in inventory, and we are not.

Mr. BURNS. Does it require much money tied up in order to keep an inventory of those parts on hand?

Mr. BUTLER. It is the equivalent of about \$12,000 a bus, the things that you have to buy.

Mr. BURNS. You have before you a chart dated November 11, 1955, "Percent of buses (intercity and city) built by the various bus manufacturers." Was this something that was prepared by your company?

Mr. BUTLER. That's right.

Mr. BURNS. And will you state the source of the statistics on this chart?

Mr. BUTLER. These are from the Automotive Manufacturers Association monthly reports.

Mr. BURNS. What type of engines do you use in your buses?

Mr. BUTLER. We use Cummins, the type gasoline, diesel, and so forth, or make of engines. We use both gasoline and diesel and propane, all three.

Mr. BURNS. Have you ever used any General Motors diesels in your buses?

Mr. BUTLER. Yes, sir.

Mr. BURNS. Will you tell us to what extent you have used them and on what occasions?

Mr. BUTLER. Well, we have used them only in our intercity coaches, and to a rather limited extent, because we cannot buy them directly from the electromotive division that manufactures them at GM, or the GM truck and coach division. We must buy them, you might say, bootleg style through the dealers.

Mr. BURNS. Does General Motors sell diesel engines through dealers?

Mr. BUTLER. Yes; we have been able to buy engines through their dealers with some difficulty.

Mr. BURNS. In what way have you had difficulty in buying from dealers?

Mr. BUTLER. We have had experience with placing the orders with dealers, and if the truck and coach division finds out where he is going to resell those engines, they just don't ship them to him on one pretext or another.

Mr. BURNS. And have you endeavored to purchase them directly from the General Motors Corp. truck and coach division?

Mr. BUTLER. We have endeavored to purchase them directly from the manufacturer of the engines, that is, the General Motors Diesel

Division, which is not the same as GM Truck and Coach. It is a separate division.

Mr. BURNS. And have you been able to buy them from the Diesel Division of General Motors?

Mr. BUTLER. No, sir; they have evidenced willingness to sell us, but on further investigation they declined to do so.

Senator O'MAHONEY. Have they given any reason to the company for such declination?

Mr. BUTLER. Yes; I recall one reply. We have asked them periodically over the years to sell them to us. One of the replies was that their business was so heavy that they couldn't take on any additional responsibilities for deliveries.

In one or 2 other times they have said they have taken it up and it was a matter of company policy that they did not want to sell the coach to us because it would make them liable to open the thing for sale for others. I don't remember if that is the exact phraseology, but that is the gist of it.

Senator O'MAHONEY. Did you ever discuss free enterprise with them?

Mr. BUTLER. I beg your pardon?

Senator O'MAHONEY. Did you ever discuss free enterprise?

Mr. BUTLER. With them?

Senator O'MAHONEY. In the attempt to make such purchases.

Mr. BUTLER. No.

Mr. BURNS. I show you a letter dated April 27, 1950, from E. P. Crenshaw, assistant general sales manager of GMC Truck and Coach Division, addressed to the Flexible [sic] Co. Is that one of the communications that you just referred to?

Mr. BUTLER. Yes; it is.

Mr. BURNS. And will you read the text of that into the record?

Mr. BUTLER (reading):

Referring to our phone conversation on the 270-cubic inch GMC engines for your 25-passenger coaches.

This has been discussed with the management and they do not wish to permit the sale of GMC engines for original equipment on other makes. If we were to release them to one manufacturer, we may have to offer them to all others.

Sorry we are not able to serve your needs.

This particular letter is with regard to the gasoline engine, I think, rather than the diesel.

(The letter above referred to in its entirety is as follows:)

GMC TRUCK AND COACH DIVISION,
GENERAL MOTORS CORP.,
Pontiac, Mich., April 27, 1950.

Mr. G. F. CROW,
Vice President, Flexible Co.,
Loudonville, Ohio.

DEAR MR. CROW: Referring to our phone conversation on the 270-cubic inch GMC engines for your 25-passenger coaches.

This has been discussed with the management and they do not wish to permit the sale of GMC engines for original equipment on other makes. If we were to release them to one manufacturer, we may have to offer them to all others.

Sorry we are not able to serve your needs.

Best wishes.

Yours very truly,

E. P. CRENSHAW,
Assistant General Sales Manager, Motor Coach Division.

Mr. BURNS. I have a letter dated January 3, 1952, from the Great Lakes Diesel Co. of Cleveland, Ohio, signed by Dick Cook, sales engineer, addressed to the Flexible [sic] Co. Will you read that into the record?

Mr. BUTLER (reading):

Subject: Acknowledgment of Flexible Purchase Order No. 41775.

DEAR MR. CASNER: This letter is to acknowledge receipt of the subject purchase order covering the General Motors diesel power unit. Specifications are in proper order. Shipment will be made about January 16, 1952, as required.

(The letter above referred to in its entirety is as follows:)

GREAT LAKES DIESEL Co.,
Cleveland 13, Ohio, January 3, 1952.

Subject: Acknowledgment of Flexible Purchase Order No. 41775.

Mr. R. H. CASNER,
The Flexible Co.,
Loudonville, Ohio.

DEAR MR. CASNER: This letter is to acknowledge receipt of the subject purchase order covering the General Motors diesel power unit. Specifications are in proper order. Shipment will be made about January 16, 1952, as required. Thank you.

Most sincerely,

DICK COOK, Sales Engineer.

Mr. BURNS. Who are the Great Lakes Diesel Co.?

Mr. BUTLER. Great Lakes Diesel is a dealer in Cleveland, Ohio, a dealer for diesel engines, according to the letterhead.

Mr. BURNS. Now I show you another letter dated January 21, 1952, from the Great Lakes Diesel Co. to Flexible [sic] Co. Does that refer again to an order with respect to diesels?

Mr. BUTLER. Yes, but it looks like a different order than that one. It is a different number:

Subject: Acknowledgement of Flexible Purchase Order 42117 and 42185.

DEAR MR. CASNER: This letter is to acknowledge receipt of the subject purchase orders covering GM diesel power units. The subject orders and your previous purchase order No. 41775 has been amended to specify the SAE No. 1 flywheel housing and a SAE No. 1 to SAE No. 3 flush adaptor ring per discussion with Mr. R. D. Neiderhiser on January 14, 1952.

Due to the housing and adaptor change, engines will be delayed somewhat beyond required delivery dates. We will expedite all possible.

(The letter above referred to in its entirety is as follows:)

GREAT LAKES DIESEL Co.,
Cleveland, Ohio, January 21, 1952.

Subject: Acknowledgement of Flexible Purchase Order 42117 and 42185.

Mr. R. H. CASNER,
The Flexible Co.
Loudonville, Ohio.

DEAR MR. CASNER: This letter is to acknowledge receipt of the subject purchase orders covering GM diesel power units. The subject orders and your previous purchase order No. 41775 has been amended to specify the SAE No. 1 flywheel housing and a SAE No. 1 to SAE No. 3 flush adaptor ring per discussion with Mr. R. D. Neiderhiser on January 14, 1952.

Due to the housing and adaptor change, engines will be delayed somewhat beyond required delivery dates. We will expedite all possible.

Thank you.

Most respectfully,

DICK COOK, Sales Engineer.

Mr. BURNS. So your company had placed an order with this dealer for the purchase of some diesel engines?

Mr. BUTLER. Yes, apparently so.

Mr. BURNS. And I show you a letter dated February 8, 1952, from Great Lakes Diesel Co. to Flexible Co., and I ask you to read the text of that.

Mr. BUTLER (reading) :

Subject : Purchase Orders Nos. 41775, 42117, 42185.

DEAR MR. CASNER: In accordance with our recent telephone conversation and by direction of the Detroit Diesel Engine Division of General Motors Corp., we are returning herewith the subject purchase orders.

(The letter above referred to in its entirety is as follows:)

GREAT LAKES DIESEL CO.,
Cleveland, Ohio, February 8, 1952.

Subject : Purchase Orders Nos. 41775, 42117, 42185.

Mr. R. H. CASNER,
The Flexible Co.
Loudonville, Ohio.

DEAR MR. CASNER: In accordance with our recent telephone conversation and by direction of the Detroit Diesel Engine Division of General Motors Corp., we are returning herewith the subject purchase orders.

Yours very truly,

CHARLES N. RINI,
For DICK COOK,
Sales Engineer.

Mr. BURNS. Do you know why the Detroit Diesel Division of General Motors directed this dealer to refuse your order?

Mr. BUTLER. No; I am not sure whether there was any further information on this particular case.

Mr. BURNS. I show you a memorandum from your file, Intercompany Correspondence, the Flexible Co., dated January 29, 1952, to Mr. T. P. Butler from R. H. Casner. This last letter was dated February 8, about 10 days after this memorandum. Was that from one of your employees directed to you?

Mr. BUTLER. Yes; that is from our purchasing agent.

Mr. BURNS. Mr. Casner is the individual referred to on these letters from Great Lakes?

Mr. BUTLER. That's correct.

Mr. BURNS. And what is his position with the company?

Mr. BUTLER. He is vice president in charge of purchasing.

Mr. BURNS. Will you read the text of that memorandum into the record?

Mr. BUTLER (reading) :

I received a telephone call from Dick Cook, of Great Lakes Diesel, this afternoon wherein he opened the conversation by saying that—

"I am afraid I have bad news for you. Apparently your customer who was intending to receive equipment from you which was powered with a GMC diesel engine has dropped the information in such a way that it got back to General Motors. I just received a telephone call from the Detroit office stating that orders had come down direct from Mr. Wilson who had a meeting with other officials in Chicago that we were not to deliver any engines to the Flexible Co. as they are competitors of ours."

I asked Mr. Cook if he would confirm this in a letter at the time he returned our three orders for engines, and he said that he would. He stated that he was very sorry he could not fulfill the orders as originally planned but since the orders came directly from headquarters, they of course would have to forego this business.

(The letter above referred to in its entirety is as follows:)

INTERCOMPANY CORRESPONDENCE

THE FLEXIBLE Co.,
Loudonville, Ohio.

To: Mr. T. P. Butler.

From: R. H. Casner.

Date: January 29, 1952.

Subject: Conversation with Dick Cook at Great Lakes Diesel regarding orders for GMC diesel engines.

I received a telephone call from Dick Cook, of Great Lakes Diesel, this afternoon wherein he opened the conversation by saying that—

"I am afraid I have bad news for you. Apparently your customer who was intending to receive equipment from you which was powered with a GMC diesel engine has dropped the information in such a way that it got back to General Motors. I just received a telephone call from the Detroit office stating that orders had come down direct from Mr. Wilson who had a meeting with other officials in Chicago that we were not to deliver any engines to the Flexible Co. as they are competitors of ours."

I asked Mr. Cook if he would confirm this in a letter at the time he returned our three orders for engines, and he said that he would. He stated that he was very sorry he could not fulfill the orders as originally planned but since the orders came directly from headquarters, they of course would have to forego this business.

RHCasner:ds

Senator O'MAHONEY. What was the date of that?

Mr. BUTLER. That is dated January 29, 1952.

Senator O'MAHONEY. January 29, 1952?

Mr. BUTLER. Yes.

Senator O'MAHONEY. That is the 29th of January 1952?

Mr. BUTLER. Yes.

Senator O'MAHONEY. The letter of February 8, 1952, which you previously identified dealing with purchase orders 41775, which was the order concerning which the letter of January 3, 1952, was written to Mr. Casner by Mr. Cook saying that the specifications were in proper order and shipment would be made about January 16, 1952, as required. It dealt also with purchase orders 42117 and 42185, which according to the letters you identified were the specific orders mentioned by Dick Cook, sales engineer, in his letter to Mr. Casner of January 21, 1952. This letter contained in the closing paragraph the sentence:

We will expedite all possible. Thank you.

The letter of February 8, 1952, from the Great Lakes Diesel Co., was signed by Charles N. Rini, not by Dick Cook. As indicated here, it was signed by Charles N. Rini for Dick Cook, sales engineer, and this is the letter consisting of one sentence conveying the information that "by direction we are returning herewith the subject purchase orders," these three orders that were cancelled.

So that the memorandum you have now read into the record, an intercompany memorandum from R. H. Casner, the recipient of these three former letters, an associate in your company, to you, in which he describes the conversation which Dick Cook at the Great Lakes Diesel regarding orders for GMC diesel engines, this is dated January 29, 1952, is that, in your opinion, the conversation which brought about the writing of the letter of February 8?

Mr. BUTLER. I am not too familiar with those, Senator. These particular letters were pulled from our files by the FBI about a year ago, for what reason we don't know, and there may have been other

correspondence and so forth in there that they didn't pull. I just brought the correspondence they pulled out and made copies of and took some.

Senator O'MAHONEY. We have this order of procedure, No. 1, January 3, an acknowledgment of the order and specifications were in proper order; No. 2, dated January 21—

We will expedite all possible—

No. 3, dated February 8—

In accordance with our recent telephone conversation and by direction of the Detroit diesel engine division of General Motors Corp., we are returning herewith the subject purchase orders.

This is signed by Rini for Cook. This refers, you see, to a telephone conversation, a recent telephone conversation.

The memorandum from Mr. Casner to you dated January 29, 1952, which was only 10 days prior to the letter of February 8, 1952, returning your orders tells you:

I have received a telephone call from Dick Cook, of Great Lakes Diesel, this afternoon wherein he opened the conversation by saying that "I am afraid I have bad news."

Do you assume as I do that this is the same conversation to which Mr. Rini referred in his letter to Mr. Casner returning the orders?

Mr. BUTLER. I presume it would be.

Senator O'MAHONEY. And all of these four exhibits were taken from your files by the FBI?

Mr. BUTLER. That's right.

Mr. BURNS. I show you a letter dated May 14, 1952, from Reynolds Truck & Sales Co. to General Motors truck and coach division, which refers to order for certain engines.

Senator O'MAHONEY. Mr. Burns, before you complete that question I don't believe I asked Mr. Butler or I don't believe you asked Mr. Butler when the FBI took these papers. Did you testify about a year ago?

Mr. BURNS. They produced the papers about a year ago.

Mr. BUTLER. I think that's right. That is, these particular papers. Some of them he has were as recent as a couple of weeks ago.

Mr. BURNS. Then there is a letter which I will show you dated July 30, 1953, from the General Motors coach and truck division to the Reynolds Truck & Sales Co. referring to the letter of May 14 and signed by Philip J. Monaghan, general manager, that reads in part as follows:

GMC truck and coach division carries an inventory of truck diesel engines for the production and sale of its heavy duty trucks and for replacement in its heavy duty trucks for service purposes. In the normal course only 6.3 percent approximately of our truck diesel engine requirements are sold for service purposes and your share of these engines available for service, based on deliveries of heavy duty trucks, would normally be 1 over a period of a year.

We regret, therefore, that we cannot accept your orders for truck diesel engines, which we are returning herewith.

And then I show you a letter dated August 1, 1953, from Reynolds Truck & Sales Co. to Flixible Co. stating:

Attached are true copies of correspondence that we hold in our files. In the interim we have made many phone calls and sent numerous letters as to when delivery of these engines would be made. This is the first reply of any nature.

Now, will you tell us what that incident is that is referred to in this series of three letters?

(The three letters above referred to in their entirety are as follows:)

REYNOLDS GMC Co.,
Akron, Ohio, May 14, 1953.

GMC TRUCK AND COACH DIVISION, GENERAL MOTORS CORP.,
Pontiac, Mich.

GENTLEMEN: Pursuant to your request, we are hereby confirming the following parts orders. These are firm orders and are not subject to cancellation.

	Quantity	Part No.	Part name
Our order No. 997-B	40	5183033	Flywheel.
Ship 20—June 1, 1953;	40	E-1544	Support.
Ship 20—July 1, 1953.			
Our order No. 998-B	17	5186935	Engine.
Ship—June 1, 1953.			
Our order No. 1007-B	14	5186935	Do.
Ship—July 1, 1953.			
Our order No. 1008-B	13	5186935	Do.
Ship—Aug. 1, 1953.			

NOTE.—Please ship by Norwalk Truck Lines.

Very truly yours,

(Signed) DOUGLAS B. CAMPBELL,
Parts Manager.

GMC TRUCK & COACH DIVISION,
GENERAL MOTORS CORP.,
Pontiac 11, Mich., July 30, 1953.

Mr. MIKE REYNOLDS.
Reynolds Truck Sales Co., Akron, Ohio.

DEAR MR. REYNOLDS: Your purchase orders Nos. 998B, 1007B, and 1008B for quantities of 17, 14, and 13, respectively, for part No. 5186935, truck diesel engines, have been referred to me.

GMC Truck & Coach Division carries an inventory of truck diesel engines for the production and sale of its heavy duty trucks and for replacement in its heavy duty trucks for service purposes. In the normal course only 6.3 per cent, approximately, of our truck diesel engine requirements are sold for service purposes and your share of these engines available for service, based on deliveries of heavy duty trucks, would normally be one over a period of a year.

We regret, therefore, that we cannot accept your orders for truck diesel engines, which we are returning herewith.

Yours truly,

(Signed) PHILIP J. MONAGHAN,
General Manager.

REYNOLDS GMC Co.,
Akron 7, Ohio, August 1, 1953.

THE FLEXIBLE Co.,
Loudonville, Ohio.

(Attention: Mr. Wade Young.)

GENTLEMEN: Attached are true copies of correspondence that we hold in our files. In the interim we have many, many phone calls and sent numerous letters as to when delivery of these engines would be made. This is the first reply of any nature.

Very truly yours,

WALTER S. REYNOLDS, *President.*

Mr. BUTLER. Well, this is a General Motors dealer in Akron where we placed orders for some 471 GM diesel engines and, after a long time trying to get deliveries, we received the letter, a copy of the letter that you read.

Mr. BURNS. Why was it that Reynolds sent you this correspondence that it had received from GMC Truck and Coach?

Mr. BUTLER. Well, I thought there might be something, I think I asked for this correspondence to be sent, and probably Casner, our purchasing agent, got it for me, because I couldn't believe that General Motors knew that this kind of a thing was going on down in the lower echelons, and I thought that if we had our specific case, that it wasn't hearsay or something else, that we might be able to go higher up in the organization and maybe get that policy reversed.

If I recall, this stuff was maybe sent back to somebody in General Motors, but nothing ever came of it. We still have to buy them through dealers.

Mr. BURNS. I show you a document dated July 30, 1953, a conversation with Louis Delamarter, Grand Rapids Coach Co., regarding 471 GM engines. Is that a document from your files?

Mr. BUTLER. Yes, sir; I think so.

Mr. BURNS. And who is Mr. Delamarter?

Mr. BUTLER. My understanding is that Mr. Delamarter is a transit-bus operator in some town up in Michigan and, in addition to operating transit buses, he buys used buses and reconditions them for resale. He was a friend of one of our sales managers and we thought perhaps through him we could obtain some GM engines which he said he had.

Mr. BURNS. Will you read that memorandum, please?

Mr. BUTLER (reading):

Mr. Delamarter advised me over the phone today that he does not purchase engines either from General Motors Truck and Coach or direct from the Detroit Diesel. His source of supply is the Overseas Division of Detroit Diesel. The engines that he has in this country actually came from Mexico.

The reason for the surplus of 471 diesels is that the extreme drought in lower Texas and Mexico has required the farmers to go deeper for their irrigation water and the 471 engine was not satisfactory; they had to go to the 671 diesel.

Mr. Delamarter says that he already has the Overseas Division's permission to sell these engines to us but that he cannot afford to antagonize the Truck and Coach Division, or their central regional sales manager, Mr. Ed. Lewis (x) because between Lewis and Crenshaw they assist Delamarter in the sale of used equipment.

Mr. BURNS. Who is Crenshaw?

Mr. BUTLER. Crenshaw is the sales manager of GM Bus Division.

Mr. BURNS. Go ahead.

Mr. BUTLER (reading) :

I believe you are familiar with the fact that he purchases used Greyhound coaches as well as equipment from other operators and then sells it, not only in this country but for export.

When Delamarter mentioned the fact that he was negotiating a sale to the Flexible Co. to Crenshaw, Crenshaw blew up, but after they talked a little bit Delamarter asked him why he objected to selling the 471 engines to Flexible for use in a 29-passenger bus when his Coach Division did not even build a bus competitive to Flexible. Crenshaw told Delamarter that the Flexible Co. was into a big deal and that the 471 engine would only be the beginning; it wouldn't be long before we would be purchasing the 671 engine, which, of course, Crenshaw would like to avoid.

Delamarter told Crenshaw, "Well, after all, I can always sell them to another dealer that I'm acquainted with and he can in turn sell them to Flexible." Crenshaw said, "You ought to be smarter than to do that."

I asked Delamarter about the price of the unit and of course we couldn't pinpoint that over the phone without a bill of material. He tells me they have converted quite a few of these engines for installation in aerocoaches in Mexico, and also on his own property. He did tell me that a complete power unit with radiator, everything necessary to start to run, including the clutch, sold for \$2,800. He compared this price to dealers in the States who are selling a comparable industrial unit and stated these domestic dealers were getting \$4,600 for the same equipment.

The engines that Delamarter has come equipped with a No. 5192246 flywheel housing, and the flywheel is equipped for a 14-inch clutch similar to the regular truck installation. I could not remember the SAE identification of our housing, but Delamarter is going to bring prices with him to the Los Angeles meeting and I am going to bring our bill of material so that we can compare and arrive at some price.

To facilitate doublechecking back here, the engines in the industrial form are known as the 4031C stationary engine, or industrial engine.

Delamarter says that these engines are the C engine as indicated by the above number.

Mr. BURNS. Why did you want to get these GM diesels?

Mr. BUTLER. Well, we have sold a number of GM diesel-powered coaches to certain operators who have a lot of diesel equipment, the 471 diesel having the same pistons and a lot of parts in it that the 671 has. We sold, for instance, perhaps, some of these diesels when we finally got them to Greyhound. They prefer, of course, the GM diesel in the Greyhound organization. I don't know whether that is what we were after for this particular order or not, but it was for 29-passenger buses.

Mr. BURNS. Were any of your customers able to buy any diesels, GM diesels, for replacement purposes?

Mr. BUTLER. Yes, sir; they did frequently.

Mr. BURNS. Will you explain why it is that the customers were able to buy GM diesels for replacement purposes and you had difficulty buying for original-equipment purposes?

Mr. BUTLER. I presume GM, after the bus is sold and the customer has it, they might as well sell him an engine, but if they sell it to us in the first place, we might be competition on a deal.

Mr. BURNS. Have your customers had any difficulty in buying the GM diesel for replacement?

Mr. BUTLER. No; not that I know of.

Senator O'MAHONEY. Mr. Butler, I wanted to ask you 1 or 2 more questions. I wanted to be certain of my understanding of the statement that you made in response to one of Mr. Burns' questions when he submitted to you these copies of letters from the Reynolds GMC

Co., 463 Locust Street, Akron 7, Ohio, signed by Douglas B. Campbell, Philip J. Monaghan, and Walter S. Reynolds.

The first of these letters dated May 14, 1953, was an order from Reynolds Truck, a firm order for certain parts; the second was a letter signed by Mr. Monaghan, general manager of GMC Truck and Coach Division at 660 South Boulevard, East Pontiac 11, Mich., stating that the order for truck diesel engines could not be accepted. This was a denial of the firm order originally given; and the third letter, dated August 1, 1953, was a letter from Mr. Reynolds, directed to the Flxible Co. for the attention of Mr. Wade Young. This was the covering letter which apparently transmitted the other two to which I have referred. He says in this letter:

Attached are true copies of correspondence that we hold in our files. In the interim we have made many phone calls and sent numerous letters as to when delivery of these engines would be made. This is the first reply of any nature.

Now you made an explanation of the last letter which I understood to mean that in your opinion Mr. Reynolds was in effect saying that the upper brass had canceled this order. Do I understand you correctly?

Mr. BUTLER. I think this letter probably did not come with these two. This letter would be in our file because this is addressed to the Flxible Co. Well, he must have sent these both then.

Senator O'MAHONEY. And what was the conclusion that you expressed to Mr. Burns?

Mr. BUTLER. When you asked me why we had these letters?

Senator O'MAHONEY. Yes.

Mr. BUTLER. I think that I asked our purchasing department, Casner or one of them, asked this man Reynolds to give us copies of the thing so that I would have something specific, it wouldn't be just hearsay that we would try to get them and he turned us down, and this man Reynolds, as I recall, was rather provoked by the situation and he wanted to sell these.

After all, this is a big chunk of business for a little dealer, 14 or 17 engines at \$3,000 apiece, and the thought he had some nice business, so he was very unhappy at having the order turned down, and therefore didn't mind giving us a copy of the actual correspondence.

Senator O'MAHONEY. It was illustrating, was it not, the practice which you have previously described of orders for GM products having been accepted by the lower echelons which later on were overruled by the upper echelons?

Mr. BUTLER. Frankly, if I hadn't seen this letter here, I wouldn't believe that they did this. If somebody had told me the general manager of GM took the trouble to write and turn down an order for some single dealer, I would have had to have proof that he did it.

Senator O'MAHONEY. I was remembering a sentence in the memorandum from Mr. Casner to you. This went into the record together with the three letters covering a certain order that you were placing with the Great Lakes Diesel regarding orders for General Motors engines, and Mr. Casner was explaining to you that he had bad news by telephone from Dick Cook and then this quotes the conversation, what Dick Cook had said, it contains this sentence:

I just received a telephone call—
this is Mr. Cook speaking—
from the Detroit office.

Again, I say this is Mr. Dick Cook speaking, Dick Cook of the Great Lakes Diesel Engine Co.:

I just received a telephone call from the Detroit office stating that orders had come down direct from Mr. Wilson who had a meeting with other officials in Chicago that we were not to deliver any engines to the Flexible Co. as they are competitors of ours.

Now I assume that there are many Wilsons in the General Motors Co., but when this conversation by Mr. Cook says the orders had come down direct from Mr. Wilson, I am inclined to believe that only one Mr. Wilson was in the mind of Mr. Cook when he talked to your Mr. Casner, namely, the present Secretary of Defense.

Have you anything else?

Mr. BURNS. That is all today.

Senator O'MAHONEY. The committee will stand in recess, after thanking Mr. Butler for his testimony, until tomorrow morning at 10 o'clock.

(Whereupon at 2:10 p. m., the subcommittee adjourned to reconvene Thursday, November 17, 1955, at 10 a. m.)

A STUDY OF THE ANTITRUST LAWS

THURSDAY, NOVEMBER 17, 1955

UNITED STATES SENATE,
SUBCOMMITTEE ON ANTITRUST AND MONOPOLY
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met, pursuant to recess, at 10:15 a. m., in room 424, Senate Office Building, Senator Joseph C. O'Mahoney presiding.

Present: Senator O'Mahoney (presiding).

Also present: Joseph W. Burns, chief counsel, Malcolm Mecartney, assistant counsel, Jesse J. Friedman, economic consultant.

Senator O'MAHONEY. Mr. Burns, are you ready to proceed?

Mr. BURNS. Yes, Senator.

In October 1953, General Motors acquired the Euclid Road Machinery Co., of Cleveland, Ohio. This company specializes in the manufacture of heavy-duty, earth-moving, off-highway equipment. Its products include extra-heavy-duty motor vehicles (ranging in weight from 20 to 50 tons), self-loading motorized scrapers, and loaders. In addition, it makes aircraft tractors designed to tow large bombers. Its products are used in mining operations, construction of dams, highways, airports, et cetera. Prior to the merger, Euclid was the leading company in the field of off-the-highway heavy-duty motor vehicles, its principal product. Its annual sales were approximately \$50 million.

Prior to the acquisition, Euclid purchased engines for its products from both General Motors and the Cummins Engine Co., Inc., of Columbus, Ind. Cummins is the largest independent manufacturer of diesel engines in the United States. Euclid was its largest single customer. Since the acquisition by General Motors, Euclid's purchases from Cummins have dropped about 75 percent.

This acquisition has the characteristics of both conglomerate and vertical integration by merger. By this transaction General Motors purchased one of the principal customers in the field, and as a result was in a position to preempt—and in a very large measure already has preempted—the market represented by this customer. At the same time it illustrates the extension of General Motors' activities into a new field. It is in this area of conglomerate and vertical mergers that the statute—section 7 of the Clayton Act—does not provide clear guides for either business or enforcement officials. Whether this merger violates section 7 is not free from doubt. A study of this acquisition may provide useful factual information for consideration of this particular phase of the problem.

The first witness we will call is Charles Raymond Boll, vice president, sales, Cummins Engine Co.

Senator O'MAHONEY. Mr. Burns, your statement takes us back to the facts which have already been developed in this hearing with respect to the manner in which General Motors has become the greatest manufacturing company in the world.

As I recall it, its expansion into the field of manufacturing diesel engines was begun by the acquisition of a small company, am I right?

Mr. BURNS. The Winton Co. and the Electro-Motive Co.

Senator O'MAHONEY. And thereby it proceeded by the use of the talent which it had and the money which it had to create the greatest of all of the diesel manufacturing, locomotive manufacturing companies, which is a division now.

Then the next step was expansion into the field of making transit buses. Here the same pattern was followed, was it not?

Mr. BURNS. Yes; also intercity buses, both types.

Senator O'MAHONEY. By transit, I meant both. And there again the expansion began by purchase of an interest in the customer who would buy the product; did it not?

Mr. BURNS. Yes, I believe that is so—the purchase of engines for the use in buses and trucks of the Yellow Coach.

Senator O'MAHONEY. And now you are proceeding to produce evidence to indicate that there is another expansion in the making into the field of the manufacture of heavy duty—

Mr. BURNS. It is referred to as earth-moving machinery.

Senator O'MAHONEY. Earth-moving machinery; yes. I notice in your statement “off-the-highway heavy-duty motor vehicles.” This is earth-moving machinery in which General Motors have never before been engaged?

Mr. BURNS. That's correct.

Senator O'MAHONEY. Now General Motors has acquired what was the leading company in the manufacture of this heavy-duty earth-moving machinery.

Mr. BURNS. In one phase of it, this company was the leading company in the manufacture of the heavy-duty motor vehicles, the dump trucks that they used, and General Motors was not in that field at all.

There are, of course, many other types of equipment which are used in off-the-highway construction which Euclid was not making at the time.

Senator O'MAHONEY. It must be apparent from these revelations, these factual revelations, that the merger movement in this country is producing a centralization of our economic system over which the people of the United States as a whole have no effective control, except by the method which has heretofore been attempted of creating a multitude of boards and commissions. But these latter often become vague and uncertain in their actions as administrations change and as appropriations by Congress change. As a result, the people, and particularly the business interests of small companies which are taken over, are at a loss to know what the rule of economic behavior is, or what is good and what is bad.

Mr. BURNS. I think this particular transaction may well illustrate for the benefit of the subcommittee the need for more definite procedures for passing in advance on the desirability of the mergers, at least at certain levels, where a large part of important industries is affected.

Senator O'MAHONEY. Well, there will be much discussion about what the proper remedy is before we reach that stopping place in our hearing.

What we have developed, and I think this cannot be doubted, is that economic concentration is proceeding at a pace which must alarm everybody who believes in local control over business and the preservation of real opportunity for free enterprise, because enterprise cannot be free if the consistent growth and expansion of a few large units is permitted to continue.

Call your witness.

Mr. BURNS. Mr. Boll.

Mr. Boll, what is your position with the Cummins Engine Co., Inc.?

**STATEMENT OF CHARLES RAYMOND BOLL, JR., VICE PRESIDENT
(SALES), CUMMINS ENGINE CO.**

Mr. BOLL. Mr. Burns, I am vice president of sales of the Cummins Engine Co.

Mr. BURNS. Where is the Cummins Engine Co. located?

Mr. BOLL. It is located in Columbus, Ind. It is about 40 miles south of Indianapolis.

Mr. BURNS. Now, would you tell us a little about the company's background, when it was founded and what type of products it manufactures?

Mr. BOLL. Cummins Engine Co. was founded in 1919. Various models of heavy-duty diesel engines of a relatively slow rotative speed were manufactured during the period of 1918 to 1932.

In 1932 the first of a line of high-speed lightweight diesel engines was produced commercially. These engines rapidly gained acceptance throughout the world and many types of applications, and they were among the first diesel engines suitable for applications in mobile equipment, such as over-the-highway trucks and buses, shovels and cranes, off-highway haulage equipment for construction, earth moving, and mining.

Mr. BURNS. When did you first develop the type of high-speed engines that were used in trucks and buses?

Mr. BOLL. The first units were sold commercially in 1932.

Mr. BURNS. And how large a company is your company in this field of diesel engines?

Mr. BOLL. In 1954, our gross sales were \$59,200,000, approximately.

Mr. BURNS. What type of equipment uses the engines which your company makes?

Mr. BOLL. These high-speed diesel engines are used for applications in over-the-highway trucks, buses, construction equipment, mining equipment, in logging equipment, ships, general power units such as sawmills, and so forth, generator sets—that type of general application. Our plant is located in a city of about 20,000 people, and we employ 3,000.

Mr. BURNS. Would you, in order that we may understand the nature of the industry in which you operate, give us the names of the companies with which you are in competition in the manufacture of these diesel engines, and their location?

Mr. BOLL. The principal competitors of the Cummins Engine Co. in the diesel engine line are Caterpillar Tractor Co., the General Motors Corp.—

Mr. BURNS. Where is the Caterpillar Tractor Co. located?

Mr. BOLL. Peoria, Ill. General Motors Corp., Detroit—Diesel Division in Detroit; Waukesha Motors Co., of Waukesha, Wis.; Hercules Motors in Canton, Ohio; Buda Engine Division of Allis-Chalmers, and in certain of their products in certain lines of engines, International Harvester of Chicago, Ill.; and the Mack Truck Co., New York City.

Senator O'MAHONEY. Allis-Chalmers Buda Engine Division is in Harvey, Ill.?

Mr. BOLL. Yes, sir.

Mr. BURNS. Can you tell us approximately the position of your company in this field of diesel engines in relationship to these competitors? Do you have any figures or any information as to where you stand in the industry?

Mr. BOLL. It is rather difficult to say. It depends a lot on the particular industry involved.

For example, in the highway trucking industry, according to the best figures that we have available, registration figures during the first half of the year, we register at about half of the diesel engines that were sold in that field. No such figures, however, are available for the other fields in which we sell.

Senator O'MAHONEY. I might ask a question this way. Can you give us the relative strength of these companies on the basis of their capital stock or assets? How do they rank?

Mr. BOLL. No, sir, I am afraid I can't, because take International, for example. They have many assets that are for entirely other purposes than producing diesel engines. I would have no way of taking that portion out of the total.

Senator O'MAHONEY. I don't want you to segregate the particular divisions. Allis-Chalmers has other divisions, too. How large is the Caterpillar Tractor Co., for example? How is it rated? Is it a \$500,000 company?

Mr. BOLL. I don't know. I can't answer that. I do know that they are one of the top folks in their industry.

Senator O'MAHONEY. Well, these are not small babies.

Mr. BOLL. No, sir; none of them.

Senator O'MAHONEY. They are all big companies.

Mr. BOLL. Yes, sir.

Senator O'MAHONEY. Mr. Burns, I think it would be well to supply that information from Moody's or Standard and Poor's.

Mr. BURNS. Now, this 50 percent of it, did you say, over the highway—

Mr. BOLL. Yes.

Mr. BURNS. Does that include all of the companies, General Motors, International Harvester, Mack Truck, registration of trucks having your diesel engines, amounting to about 50 percent of the total?

Mr. BOLL. Yes.

Mr. BURNS. And which of these companies are independent engine companies, not part of a very large corporation manufacturing other products?

Mr. BOLL. Well, there are two. One of them is Waukesha and the other is Hercules.

Mr. BURNS. And what is your position in the industry with respect to those independent companies?

Mr. BOLL. Our gross sales are higher than either of those.

Mr. BURNS. Does your company make any products other than diesel engines?

Mr. BOLL. No, sir; we manufacture only diesel engines. We do not build either gasoline engines or the end item in which the engine is used.

Mr. BURNS. Has your company's sales been increasing or decreasing, take since the war as an example?

Mr. BOLL. Our annual gross sales have increased—I happen to have a figure here for 1950 which was about \$42,800,000 gross sales for the year 1950, to 1954, which was \$59,184,000. I do not have a figure for 1946.

Mr. BURNS. In your particular field, diesel engines, you have been able to compete successfully with these larger corporations which have diesel divisions?

Mr. BOLL. Yes.

Mr. BURNS. Among your customers, have you sold to the Euclid Road Machinery Co., Inc.?

Mr. BOLL. Yes, sir.

Mr. BURNS. Can you tell us when you first began to sell to them?

Mr. BOLL. The best records that we have at our plant, we sold the first engines to Euclid Road Machinery Co. in 1936 in any kind of volume. There may have been 1 or 2 prior to that time, but basically it was 1936, and we are continuing to sell them today.

Mr. BURNS. What type of products did Euclid make?

Mr. BOLL. Well, in general they manufacture heavy off-highway haulage equipment for mining and construction. It is basically earth-moving equipment, specializing in so-called end dump trucks which are heavy dump trucks, rubber-tired, also manufacturing some units known as loaders which are elevating loaders to load equipment, similar to the haulage equipment they build, and in more recent years scrapers, crawler tractors.

Mr. BURNS. We have been advised that as of October 1, 1953, Euclid was acquired by the General Motors Corp. I would like to ask you some questions with respect to the period prior to that date.

Can you tell us, do you have any knowledge, as to whether Euclid was making these three different types of equipment throughout this period since 1936, when you have been selling engines to them, or did they develop different products as they went along?

Mr. BOLL. Well, I am sure theirs was a process of continuing development, and I cannot state exactly what they were building in 1936. I know that one of their important products was the so-called end dump trucks and that type of equipment.

Mr. BURNS. Do you know how long they were making these loaders or scrapers?

Mr. BOLL. No, sir, not exactly. The scrapers, one model, has been built for quite a number of years. Several other new model scrapers have been brought out within the last 3 or 4 years, I would say, maybe 2 years.

Mr. BURNS. I would like you to tell us, if you can, the names of the companies with whom you competed in the sale of the products which it was manufacturing. Can you give us the names of some of those companies and their location?

Mr. BOLL. Well, actually I am sure that Euclid is much better qualified to give you those names than I am, Mr. Burns. I can outline some of the folks who we sell engines to who are in a similar type of business and, of course, are undoubtedly competitors of Euclid.

Mr. BURNS. Well, would you list those?

Mr. BOLL. Those are the Dart Truck Co., Kansas City, Mo.

Mr. BURNS. What kind of products do they make which are competitive?

Mr. BOLL. Dump trucks.

Mr. BURNS. They make the dump trucks. All right.

Mr. BOLL. Mack Truck Co., Allentown, Pa., dump trucks; LeTourneau-Westinghouse Co., Peoria, scrapers; Caterpillar Tractor Co., Peoria, scrapers; International Harvester Co., scrapers; Kenworth Motor Truck Co., dump trucks; M-S-R Co. of Flora, Miss., they build a power unit for scraper use; White Motor Co., their autocar division builds end dump trucks; the Eimco Corp., Salt Lake City, builds a very small crawler tractor at the moment; the Wagner Tractor Co., out at Portland, Oreg., build a line of rubber-tired tractors. Woolridge Manufacturing Co., at Sunnysdale, Calif., are a manufacturer of scrapers, and to a small degree, Peterbilt Motors Co., at Oakland, build some dump trucks used in construction work; Oshkosh Motor Truck of Oshkosh, which builds dump trucks.

Mr. BURNS. Does your company sell engines to all these companies you have just named?

Mr. BOLL. With the exception of Caterpillar; yes.

Mr. BURNS. Do any of these other companies also make engines themselves?

Mr. BOLL. Yes.

Mr. BURNS. Which ones make engines, and are they diesels or other types?

Mr. BOLL. The LeTourneau-Westinghouse Co. has a division that manufactures gasoline engines, but they are not in horsepower sizes for their equipment. Caterpillar, of course, manufactures their own engines. International Harvester Co. manufacture their own engines for certain types of equipment, but they do not manufacture higher-speed engines for this mobile type of equipment. White Motor Co. manufacture their own gasoline engines, do not manufacture diesel engines.

Mr. BURNS. Have you any information as to the position of Euclid in the industry as far as these dump trucks are concerned? Is it one of the larger companies in that field?

Mr. BOLL. There is no factual information along that line, but they are generally regarded as one of the top people in the field.

Mr. BURNS. And what type of engines have you sold to Euclid prior to October 1953?

Mr. BOLL. You mean horsepower range?

Mr. BURNS. Well, was there any different type you sold to them for different kinds of equipment?

Mr. BOLL. No. They used our standard line of engines. We sold engines ranging from 150 horsepower up to 300 horsepower, and in a few cases some 400-horsepower units.

Mr. BURNS. Were those used in all of the different types of equipment which they made at that time?

Mr. BOLL. Pretty generally; yes.

Mr. BURNS. I mean they used your engines for the trucks and the loaders, the scrapers, the tractors?

Mr. BOLL. Yes; what they call a four-wheel scraper.

Mr. BURNS. Will you tell us what the practice was in the sale by Euclid of its equipment to customers prior to 1953 insofar as the equipment of the engine that was used?

Mr. BOLL. Mr. Burns, I would prefer that you get that information from the Euclid folks.

Mr. BURNS. What I meant is this: I understand that in this type of very heavy equipment, that the customer frequently designates the engine that he wants put into it, that it is not like buying an automobile complete with the engine, that in this type of equipment it is customary for the customer to designate the engine which he wants to be put into the equipment he is buying, that is what I am interested in knowing. That is the practice.

Mr. BOLL. That's right.

Mr. BURNS. Was that the practice as far as sales by Euclid was concerned?

Mr. BOLL. To the best of my knowledge, that is correct; yes.

Mr. BURNS. Was it a general practice for the customer to do that, or was it only on special occasions that the customer would designate the type of engine?

Mr. BOLL. I would say it was probably a general practice.

Mr. BURNS. Do you know whether that is the practice in the trade generally, with other companies that make this type of equipment for the customer, to designate the engine he wanted?

Mr. BOLL. It varies with some of the manufacturers. In general, most of these folks we have talked about, that is true. In the case of Caterpillar, for example, they furnish only their engine.

Mr. BURNS. But in the case of some of these other companies that you mentioned, these large companies, they would sell the equipment and install whatever engine the customer asked for?

Mr. BOLL. That's correct.

Mr. BURNS. In your sales effort, did you approach only the manufacturers of the equipment, or did you also endeavor to sell your products at least through advertising to the purchasers of the equipment?

Mr. BOLL. Well, it is pretty general in this industry that the sales effort and advertising be pointed toward both. In other words, certainly in our case, an attempt was made to sell our product to the ultimate purchaser, as well as the manufacturer who uses it in the equipment that he builds.

Mr. BURNS. And what types of purchasers buy this sort of equipment; construction companies?

Mr. BOLL. Yes; contractors, mining companies.

Mr. BURNS. And do those purchasers usually have fairly competent information as to the qualifications of the different products that they are buying?

Mr. BOLL. Oh, I think so; yes, sir; they have pretty adequate engineering staffs.

Mr. BURNS. And the equipment is purchased to do a particular job which the contracting company or the mining company has to accomplish?

Mr. BOLL. Yes.

Mr. BURNS. So that the purchasers know pretty much what kind of power they need to do the job, or they will find that out before they purchase the equipment?

Mr. BOLL. Yes.

Mr. BURNS. Do you know whether Euclid equipped its products with engines other than the Cummins engines? This is prior to October 1953.

Mr. BOLL. Do I know whether they did equip them?

Mr. BURNS. Yes.

Mr. BOLL. Yes; they did. They had available General Motors engines prior to 1953, and also sold to a lesser degree one other make of diesel engine.

Mr. BURNS. Is there any problem in fitting your engine, as compared to any other engine, into the equipment which Euclid made prior to October 1953?

Mr. BOLL. To the best of my knowledge, it was nothing other than normal engineering and application problems that you might have, as long as the horsepower requirements were within the horsepower range of our engines, generally.

Mr. BURNS. So if the customer decided to purchase Euclid equipment, being satisfied that that was the type of equipment, he was then free to choose your engine or a General Motors engine, and that could be installed without any difficulty?

Mr. BOLL. In general.

There was one model, as I recall, that had too low a horsepower requirement for anything that we had.

Mr. BURNS. After Euclid was acquired by General Motors, were there any changes in design of the equipment which Euclid made?

Mr. BOLL. That is a difficult question to answer, because there are continual design changes in any sort of an industry such as theirs or ours, that are in process. There were several new models brought out. Does that answer your question?

Mr. BURNS. In any of the new models that they brought out, were the designs such that only the General Motors diesel could be used without changes necessary, to accommodate any other type of engine?

Mr. BOLL. To the best of my knowledge, the new designs were designed around the General Motors engine. There has been a change in one model just recently, where they are working to install our engine in that particular machine.

Mr. BURNS. What type of products did they come out with, after the acquisitions, which were designed around the GM engine?

Mr. BOLL. Mr. Burns, I would prefer you ask them that question. I am afraid that I don't have all the facts at hand on that one, the models and products, and so forth. There have been quite a number

of new products that they brought out in the crawler-tractor lines and additional scrapers.

Mr. BURNS. I didn't intend to ask for any of the details. I am interested in any problems which have been created in the sale of your engines to people who purchase Euclid equipment, when the equipment has been designed primarily for use with a GM diesel.

If someone who previously had been using Cummins engines and Euclid equipment wished to purchase one of these newly designed models, would he have any problem in having your engine installed?

Mr. BOLL. These new models that are designed around the General Motors engines, he would, of course, have a problem. It could be, that for a quantity purchase, our engine would be installed.

Mr. BURNS. What would it take to make, to adapt the equipment so that it could use the Cummins engine?

Mr. BOLL. Pretty much a redesign of the engine and sell portion of the unit.

Mr. BURNS. Would it be fair to say that with respect to these newly designed pieces of equipment, the customer who wanted delivery at the price placed on it, the price tag on it, would be better off to take the equipment with the GM diesel rather than have a changeover to accommodate the Cummins diesel?

Mr. BOLL. State that again. Would he be better off—

Mr. BURNS. Would you read it, please, Mr. Reporter.

(The question was read.)

Mr. BURNS. By "better off" I mean financially. Would it be cheaper for him to take the equipment the way it had been built rather than have it adapted to include the Cummins diesel?

Mr. BOLL. That would depend upon the price placed on that piece of equipment by the manufacturer, in this case, Euclid, and I do not know what that price would be.

Mr. BURNS. Is any of this equipment purchased at the time when speedy delivery is desirable for the purchaser?

Mr. BOLL. Yes; I would say that the contractor who, quite often—several men bidding on the same job—cannot know whether he is going to get the job or not until the bid is placed; then he quite often has need for a fast delivery.

Mr. BURNS. If a contractor needed fast delivery and picked some of this Euclid equipment designed for the GM diesel, would he be delayed in getting delivery if he had asked to have that modified to use the Cummins engine?

Mr. BOLL. I would think so; yes.

Mr. BURNS. So that in those instances he might be required to take the equipment as it was rather than wait for the changes for the installation of the Cummins engine.

Do you know to what extent Euclid builds and stocks this type of equipment so as to have it ready for delivery when an order comes?

Mr. BOLL. No, sir; I really do not know. I have no real way of knowing what equipment they do handle and have in inventory, finished equipment.

Mr. BURNS. Do you know to what extent they stock Cummins engines to have them available for speedy delivery?

Mr. BOLL. They do stock Cummins engines at their plant in Cleveland, Ohio.

Mr. BURNS. Do they have more than one plant?

Mr. BOLL. No; not to the best of my knowledge.

Mr. BURNS. What is the practice for the distribution of this type of equipment by Euclid? Is it sold direct to customers or is it sold through dealers?

Mr. BOLL. It is sold through dealers.

Mr. BURNS. Did Euclid have its own dealers before October 1953?

Mr. BOLL. Yes, sir; they did.

Mr. BURNS. Is it customary for dealers to keep any of this equipment on hand or was it the custom to order it after a customer had placed an order?

Mr. BOLL. I cannot answer that; I really do not know.

Mr. BURNS. You are not familiar with that phase of it?

Mr. BOLL. No.

Mr. BURNS. Do you sell your engines through distributors as well as directly to these companies that manufacture equipment?

Mr. BOLL. Yes, sir.

Mr. BURNS. And in this particular field, are those engines used for replacement purposes in this heavy equipment?

Mr. BOLL. Yes; they are.

Mr. BURNS. Is there any system for servicing your engines in places where large quantities of the equipment are used?

Mr. BOLL. Yes, sir. We maintain our own distributors and dealer sales and service organization throughout the country. We do have service facilities available.

Mr. BURNS. There is one point I want to make sure that we have in the record. On this equipment which has been recently designed for the use of the GM diesel, is that completely new, are those completely new products or were they designs of products, redesigns of products, which had previously been made by Euclid?

Mr. BOLL. Both, to the best of my knowledge.

Mr. BURNS. And would the installation of the Cummins diesel add to the cost of that particular piece of equipment? I am talking about the equipment which was designed for the GM diesel.

Mr. BOLL. I think I can best answer that by saying that it is our opinion that the engine prices are competitive. What charges might be put on for special engineering or that sort of thing, of course, is up to the manufacturer, the one who prices the equipment.

Mr. BURNS. Well, now, these other customers whom you have listed making this heavy type of equipment, are their products designed so that they can take either Cummins or GM engines or any other make? Are they designed so that they can? The customer is free to select the engine he wishes to be installed?

Mr. BOLL. In general, that is correct. There are probably two cases where that might not be possible.

Mr. BURNS. Now, has Euclid produced any entirely new products since the acquisition which it did not produce before the acquisition?

Mr. BOLL. Yes; they have.

Mr. BURNS. Will you tell us what kind of equipment they have produced?

Mr. BOLL. It is rather difficult for me to know the timetables and so forth, and most of what information we have is from the printed literature and that sort of thing. But they have produced or are introducing their crawler-tractor line, and a line of so-called overhung engine scrapers.

Senator O'MAHONEY. Were there crawler tractors before?

Mr. BOLL. Pardon?

Senator O'MAHONEY. Were crawler tractors manufactured before?

Mr. BOLL. By Euclid?

Senator O'MAHONEY. By other companies?

Mr. BOLL. Yes, sir; by other companies; yes, sir.

Senator O'MAHONEY. It is a common implement in the trade?

Mr. BOLL. Yes, sir.

Senator O'MAHONEY. And the other product, what was that?

Mr. BOLL. An overhung engine scraper, so-called.

Senator O'MAHONEY. Such scrapers are not new; are they?

Mr. BOLL. No, sir.

Senator O'MAHONEY. So that since the acquisition by General Motors of Euclid, it has gone into the production of two new implements?

Mr. BOLL. Either that or they are planning to go into the production. I do not know whether they are in production now on both of those equipments or not, full production yet.

Senator O'MAHONEY. Then, let us say what you do know, they have gone into the planning of these two?

Mr. BOLL. Yes; that is right.

Senator O'MAHONEY. All right.

Mr. BURNS. Do you make engines which are suitable for use in those types of equipment which you just mentioned?

Mr. BOLL. Yes, sir; we build engines in the same horsepower range.

Mr. BURNS. Do you know whether the sales price of Euclid equipment has been changed since it became part of the General Motors Corp.?

Mr. BOLL. It is my understanding that prices have been increased.

Mr. BURNS. Has the price of your Cummins diesel engine increased?

Mr. BOLL. No, sir.

Mr. BURNS. Have they gone down?

Mr. BOLL. As a matter of fact, on August 15 we did make a reduction in the price of our engines.

Mr. BURNS. At my request did you bring with you statistics showing the total unit sales to Euclid from 1950 to the end of October 1955, and the dollar sales figure during the same period?

Mr. BOLL. Yes, sir; I did.

Mr. BURNS. Will you tell us for each of these periods the unit, total unit, sales annually to Euclid?

Mr. BOLL. This is the information that you requested. Unit sales for 1950, according to our records, are or were 1,046; for 1951, 1,283; for 1952, 1,460; for 1953, 1,285; for 1954, 677; and for 1955 through October, 331.

Mr. BURNS. Will you give us the total dollar value of those sales for the same periods.

Mr. BOLL. The dollar value of sales to Euclid or Euclid division of General Motors of Cummins engines was in 1950, \$3,125,000—Do you want these rounded off?

Mr. BURNS. You might as well give the exact figures since you have them.

Mr. BOLL. For 1950, \$3,125,189.97; 1951, \$3,912,696.65; 1952, \$4,778,417.17; 1953, \$4,529,737.69; 1954, \$2,489,842.36; and in 1955 through September, \$1,054,606.57.

Mr. BURNS. Those figures would seem to indicate that in 1954, the first full year Euclid was part of General Motors, your sales dropped about 50 percent from 1952, and that in this year they have dropped again another 50 percent or about, so that they are now about 25 percent of what they were in 1952; that is approximately the percentage of the drop?

Mr. BOLL. Yes; that is about the ratio.

Mr. BURNS. The subcommittee is interested in information with respect to the effect of mergers on competition, and I would like to ask you about another merger in this business to ascertain what effect that had on your business.

I refer to the Allis-Chalmers Co.

We have been advised that the Allis-Chalmers Co. acquired the Buda Co. Are you familiar with that situation, that that is the fact, that there was an acquisition?

Mr. BOLL. Yes, sir; that was in 1953.

Mr. BURNS. What did Buda make?

Mr. BOLL. Buda manufactured diesel and gasoline engines as well as a line of some railroad equipment and forklift trucks.

Mr. BURNS. Did you sell your products in competition with Buda?

Mr. BOLL. Yes, sir.

Mr. BURNS. Did you have a customer called LaPlante-Choate?

Mr. BOLL. Yes, sir.

Mr. BURNS. What did they manufacture?

Mr. BOLL. They manufactured, so far as the use of our engines was concerned, a scraper, the overhung engine type.

Mr. BURNS. Were they also taken, acquired by the Allis-Chalmers Co.?

Mr. BOLL. Yes; they were purchased by Allis-Chalmers in, some time in late 1952.

Mr. BURNS. Now, prior to the acquisition of LaPlante-Choate, they purchased engines from your company?

Mr. BOLL. Yes, sir.

Mr. BURNS. After they were acquired by Allis-Chalmers, did they continue to purchase from your company?

Mr. BOLL. Only for a matter of a month or so, and after that time they replaced our engines entirely with Buda engines manufactured by their own division.

Mr. BURNS. So that one of the results of that merger was that your company lost access to the market of the LaPlante-Choate Co.?

Mr. BOLL. We lost that manufacturing account; that is correct.

Mr. BURNS. Now, another subject that this subcommittee has been examining into is the bus industry.

Do you make engines that are used in intercity or city transit buses?

Mr. BOLL. Yes, sir.

Mr. BURNS. Have there been any customers in the bus industry to whom you previously sold and to whom you no longer sell?

Mr. BOLL. Yes, two that I recall immediately. One of them was the White Motor Co., who manufactured city-type coaches. The other was ACF-Brill, who manufactured over-the-highway-type coaches.

Mr. BURNS. Did you supply a substantial part of those companies' requirements of engines?

Mr. BOLL. Both of those companies used our engines for their diesel coaches.

Mr. BURNS. Did that amount to a substantial quantity of business annually?

Mr. BOLL. Yes; it was.

Mr. BURNS. And those companies have stopped making buses, have they?

Mr. BOLL. Yes, sir.

Mr. BURNS. And so you lost that source of business?

Mr. BOLL. That is right.

Senator O'MAHONEY. Any further questions, Mr. Burns?

Mr. BURNS. I do have a couple of questions.

To what extent has your company been a developer of the diesel for use in the type of products that you have made?

Mr. BOLL. We have certainly been one of the early manufacturers of these higher speed lighter weight diesel engines for mobile equipment.

We have continually increased the horsepower ratings of these engines through supercharging and now through more advanced design of exhaust gas turbo chargers, which has brought the horsepower ratings up, the size of the unit down.

Mr. BURNS. Now, did you make the diesels for trucks—I will put it this way: When did you first start making diesels for use in trucks, highway trucks?

Mr. BOLL. The first of these units that we manufactured of the high-speed line in 1932 commercially were used either in 1932 or 1933 for installations in highway trucks.

Mr. BURNS. Do you know when General Motors first produced diesels for use in trucks?

Mr. BOLL. No; not exactly. The best of my knowledge is it was considerably later than that date, however.

Mr. BURNS. Now, with respect to the type of engine you sold to Euclid, this heavy-duty motor vehicle, did you do any pioneering or development of that type of engine?

Mr. BOLL. They were similar engines and, to the best of my knowledge, the first of the diesel engines used by Euclid on a commercial basis were our diesel engines.

Mr. BURNS. Do you know when Euclid began using GM diesels in its equipment?

Mr. BOLL. Quantity use by Euclid of General Motors engine was, to the best of my knowledge, either at the closing portion of World War II or immediately after the end of the war, 1945-46.

Mr. BURNS. And prior to that time, the various products which Euclid developed used principally Cummins engines?

Mr. BOLL. Yes, sir.

Mr. BURNS. Have you made any recent developments improving the performance of these diesels?

Mr. BOLL. Of our engines now?

Mr. BURNS. Yes.

Mr. BOLL. Yes, sir; we have.

Mr. BURNS. Will you just tell us briefly the benefits to be achieved from these improvements?

Mr. BOLL. Well, we have brought out and commercially marketed 2 smaller sized engines in the 150- and 175-horsepower range.

We have applied a system of exhaust-gas turbo charging which is relatively new in our industry; it is not a new idea, but it is new in our industry in the type of engines that we manufacture to our line of engines in the 250- and the 300-horsepower range.

Mr. BURNS. What are the benefits which result from these changes in the design that you have discussed?

Mr. BOLL. Well, technically the turbo charger enables you to increase the horsepower output of the engine, increase the engine rating, and to improve the efficiency of the engine since it makes use of energy in exhaust gas which you normally throw away, to supercharge the engine.

Mr. BURNS. Do you know whether anybody else is making that type of diesel engine at the present time?

Mr. BOLL. Yes, sir; they are.

Mr. BURNS. Do you know which companies are doing that?

Mr. BOLL. Buda Co. has one; Waukesha has some.

Mr. BURNS. All right; that is all.

Senator O'MAHONEY. Mr. Boll, I would like to ask you 1 or 2 questions.

Mr. BOLL. All right, sir.

Senator O'MAHONEY. This business in which you are engaged, is it a national or a local business?

Mr. BOLL. I presume you mean are the products used nationally or locally?

Senator O'MAHONEY. That is right.

Mr. BOLL. Well, those products are certainly used nationally and actually worldwide.

Senator O'MAHONEY. You ship them all over the Nation?

Mr. BOLL. Yes, sir.

Senator O'MAHONEY. How is the market now as compared with what it was immediately after the war?

Mr. BOLL. The market for our product has increased considerably since the end of the war.

Senator O'MAHONEY. And the market likewise has increased for your competitors; has it?

Mr. BOLL. Yes, sir.

Senator O'MAHONEY. What is the cause for that increased market?

Mr. BOLL. Well, one has been a general increase in the economy of the Nation, more construction equipment, for example, being required. There is more potential sale for marine engines, and our various other types of applications.

There are more requirements for highway trucks and, through the use of some of our newer products, we have opened up fields which were not available to us before because we did not have an engine suitable for those particular requirements.

Senator O'MAHONEY. Roadbuilding, for example, has expanded; has it not?

Mr. BOLL. Yes.

Senator O'MAHONEY. Do you make farm machinery?

Mr. BOLL. No, sir.

Senator O'MAHONEY. You do not. You cannot give us any measure then—

Mr. BOLL. No.

Senator O'MAHONEY. Of what has happened to farm machinery?

Mr. BOLL. No.

Senator O'MAHONEY. You make mining machinery as well; do you not?

Mr. BOLL. We manufacture nothing but the engines, Senator.

Senator O'MAHONEY. Nothing but the engines?

Mr. BOLL. Nothing but the engines.

Senator O'MAHONEY. What would you say are the fields in which increased activity demands the use of these heavy engines such as you manufacture, roadbuilding, for example, that has increased since the end of the war; has it not?

Mr. BOLL. Yes, sir; it has.

Senator O'MAHONEY. Yes.

Mr. BOLL. In our particular case, because of the type of engines that we make in the markets that we specialized in, it is the over-the-highway trucking industry and the construction industry and the mining industry which represents a considerable increase in potential. All others have gone up, too, however.

Senator O'MAHONEY. During the war your engines were made and sold to the Government; were they?

Mr. BOLL. Yes, sir.

Senator O'MAHONEY. You had a Government market as well?

Mr. BOLL. Yes, sir.

Senator O'MAHONEY. How many States in the Union would you say are using Cummins engines?

Mr. BOLL. You mean State governments or just geographical areas?

Senator O'MAHONEY. No; geographical areas.

Mr. BOLL. Oh, every State.

Senator O'MAHONEY. Every State?

Mr. BOLL. Yes.

Senator O'MAHONEY. There are approximately how many contractors with whom you make contact to sell your products?

Mr. BOLL. That is kind of a difficult one for me to answer because our sales contact is basically handled through our distributor organization, so it is difficult for me to give you a number.

However, I can say this: That I feel that our distributor organization is in contact with all of the major contractors in the country.

Senator O'MAHONEY. Now if the Government should undertake a broad-scale highway program and the States should undertake new programs for the building of toll roads and the like, and if the Interior Department should undertake to rebuild the roads and the national parks which suffered greatly during the war and during the Korean conflict, that would mean new business for this particular kind of heavy-duty machinery, would it not?

Mr. BOLL. Surely.

Senator O'MAHONEY. So that the outlook ahead for this sort of business is good or bad?

Mr. BOLL. The outlook at the present moment is good.

Senator O'MAHONEY. And has there been any change of recent years in the position of any of these companies competitively in the market?

Mr. BOLL. I am afraid I don't understand that question.

Senator O'MAHONEY. Well, you gave us at the beginning of your testimony a list of the companies with which you were competing. Has there been any change among them? Surely you have an idea as to which are your biggest competitors and which are not.

Mr. BOLL. Sure. You are speaking of a change in the engine companies themselves.

Senator O'MAHONEY. That's right.

Mr. BOLL. Their position.

Senator O'MAHONEY. That's right, because that is what you are making: engines.

Mr. BOLL. Yes. Sir, that really should be the subject of a study of some of the gross sales of these companies and so forth, and it is very difficult for me to know of some of these companies that build a variety of products, but there has been no significant change in my opinion in the production, output or position in the market of folks such as Caterpillar and General Motors and ourselves.

As far as diesel engine manufacturers are concerned, we are probably in the very top brackets.

Senator O'MAHONEY. Well, you are speaking now of the area in which you compete?

Mr. BOLL. Yes.

Senator O'MAHONEY. There has been a falling off in the engine sales to buses?

Mr. BOLL. That is right.

Senator O'MAHONEY. Because that industry has fallen off, you are not excluding that. Has the change in the activity of your company as shown in the paper that you submitted here, which shows a substantial decline in sales since August 1953, has that been in your mind an indication of a permanent change or is it only a temporary trend?

Mr. BOLL. You are referring to a change with this one account: Euclid?

Senator O'MAHONEY. Yes.

Mr. BOLL. I think that that is a permanent change.

Senator O'MAHONEY. You think that is a permanent change. You don't expect to do as well with Euclid in the future as you did in the past?

Mr. BOLL. No, sir.

Senator O'MAHONEY. But you do expect to compete with the other companies?

Mr. BOLL. Yes, sir; being in the sales department we are going to do everything we can, of course, to sell them all we can.

Senator O'MAHONEY. Certainly. Thank you very much.

The committee will stand in recess for 10 minutes.

(A short recess was taken.)

Senator O'MAHONEY. Are you ready to proceed, Mr. Burns?

Mr. BURNS. Yes, Senator. The next witness is Raymond Q. Armington. Mr. Armington, I understand that you have prepared a statement, and you may start to read it, and we will question you as we go along. We have certain questions that we want to ask you.

Senator O'MAHONEY. Are there additional copies?

Mr. BURNS. Yes; we have copies.

You are at present the general manager of the Euclid division of General Motors?

STATEMENT OF RAYMOND Q. ARMINGTON, GENERAL MANAGER, EUCLID DIVISION, GENERAL MOTORS CORP., ACCOMPANIED BY ROBERT A. NITSCHKE, ATTORNEY

Mr. ARMINGTON. Yes, sir.

Mr. BURNS. And you were formerly president of the Euclid Road Machinery Co., which was acquired by General Motors in October 1953?

Mr. ARMINGTON. Yes, sir.

Mr. BURNS. Would you describe for us the type of products used in your company?

Mr. ARMINGTON. Yes. I would like to go ahead with this statement if I may.

Mr. BURNS. I said you may, but we will stop you to ask questions as you go along.

Mr. ARMINGTON. In order to better understand our industry, and in particular the place which Euclid has in it, I would like to review its early history and background and also tell you something about its products.

The earth-moving equipment industry is a product of modern times. Within the memory of most of us here, earth had to be moved with a horse-drawn shovel. A man with a horse and scraper on a 1,500-foot haul could load and carry approximately $11\frac{1}{2}$ cubic yards of earth per hour, whereas, today the largest Euclid twin-engine, self-propelled scraper and pusher can haul over 250 cubic yards. Thus, 1 man and a machine can now do about the same amount of work that it used to take over 160 men and 160 horses. Today's mining operations from Labrador to the Tropics, our roadbuilding programs, construction of airports and power dams and flood-control projects would not be possible without the earth-moving machinery industry which produces annually approximately \$1 billion worth of machinery.

Senator O'MAHONEY. May I interrupt you to confirm your statement by saying for the record that when I first went West, I found it to be the practice in several mining communities for the chamber of commerce to take a day or two off each month, and on these days the members of the chamber of commerce would get their shovels and go out and help the county to build its county roads to the mining area. That, of course, is a thing of the long-dead past.

Mr. ARMINGTON. Well, then you really know the background of this industry, because that is where it started.

Senator O'MAHONEY. Yes; I have lived through it. I have seen it grow, and I have seen the effect it has had upon the economy of the United States and upon the free enterprise of the individuals of the United States.

Mr. ARMINGTON. It has been a very exciting and interesting development.

Senator O'MAHONEY. I am sure it has.

Mr. ARMINGTON. The principal earth-moving machine is a crawler tractor. Prior to 1952, Euclid did not make this piece of equipment.

It did, however, manufacture huge off-highway rear-dump trucks, rubber-tired bottom-dump trucks and self-propelled scrapers, all of which are used for the transport haulage of earth, rock, coal, and ore. Actually, so large are these trucks that they are classified as being in the construction industry rather than as commercial trucks.

I would like to show you some photographs typical of these machines and their use. The first photo that I would like to show you is of a rear-dump machine that we make; that is one of the higher volume items that we manufacture, principally used for hauling rock, iron ore, limestone, things of that nature.

Senator O'MAHONEY. In what State was that taken?

Mr. ARMINGTON. I will have to look at the back.

Senator O'MAHONEY. This apparently was taken at the Bhakra Dam in India.

Mr. ARMINGTON. We have them all over the world, so I wasn't sure just where this was taken.

Senator O'MAHONEY. When was that truck sold to a contractor in India?

Mr. ARMINGTON. I don't know. It would be within the last few years, but I don't know the exact date.

Senator O'MAHONEY. Well, were you selling trucks to contractors in India before August 1953?

Mr. ARMINGTON. Oh, yes; yes. We have had a very good export volume since 1945.

Senator O'MAHONEY. You have been an international operator since 1945?

Mr. ARMINGTON. Yes, sir.

Senator O'MAHONEY. That is to say, you have been engaged in interstate and foreign commerce.

Mr. ARMINGTON. Yes, sir.

Now the next photo I would like to show you is our bottom dump line. These units usually operate in fleets and usually are used to haul dirt. I emphasize that to indicate the difference between dirt and rock. Dirt is a free flowing material which can pass through the bottom of the hauling unit.

Senator O'MAHONEY. This is from a dam in Switzerland. I was hoping that you would get some of the beauties of mountainous Wyoming.

Mr. ARMINGTON. Well, I hope we have one there. I am not sure. There are many units that have operated in Wyoming. There have been many very interesting projects in Wyoming during that last few years, and Euclids have played an important part, I am sure, in all of them.

This is the Euclid loader and this picture was taken on the Pennsylvania Turnpike. This shows the Euclid loader loading dirt into Euclid bottom dumps. The Euclid loader is a high-volume production unit, can load as high as a ton of dirt a second. Records of 1,200 tons an hour average are quite frequent with that machine, excavation.

The next photo I would like to show you is our 15½-yard scraper. That was taken, I believe, near Louisville, Ky., building a plant site.

Next I would like to show you a picture of our twin-power scraper. This picture was taken on the New York Thruway. You will note there is an engine on the back driving the rear wheels as well as the

engine on the tractor on the front driving the front wheels. That was an exclusive development by the Euclid organization back in the late 1940's.

Senator O'MAHONEY. Now you are showing us a series of pictures of the equipment manufactured by Euclid.

Mr. ARMINGTON. Yes, sir.

Senator O'MAHONEY. Which it would be impossible for the communities which desire to benefit from dams or roads, such as these machines were used upon, to have built in their own communities, is it not?

Mr. ARMINGTON. I don't believe I quite follow that, Senator.

Senator O'MAHONEY. Well, it would be altogether impossible, would it not, for the small towns and counties—

Mr. ARMINGTON. Oh, to build it by themselves.

Senator O'MAHONEY. To build it by themselves, that is the big change that you are telling us about, is it not?

Mr. ARMINGTON. I am not sure that is completely true. I think it is substantially true, but you take this twin power scraper, it could be used on relatively small projects. Now a contractor, it is true, would have to—

Senator O'MAHONEY. But the manufacture of it is a national business.

Mr. ARMINGTON. Oh, definitely, definitely.

Senator O'MAHONEY. There is no doubt about that, is there?

Mr. ARMINGTON. No doubt, but the point I wanted to try to develop in answer to your question was that this machine is a one-man dirt mover and that one man could get out with this machine and work on a small job.

Senator O'MAHONEY. I am delighted that you are telling us this and making this exhibit, because it is proving the point which I have been trying to preach for 20 years as a Member of the Senate, namely that our economics have become a national concern. They are no longer a local concern.

And if they are to be regulated in the public interest at all, they have got to be regulated, if we are to have a free Government, by the free government of the people of the United States.

If they are not so regulated in the public interest, then they will be regulated by the private groups that succeed in getting control of more and more of the economy. I don't ask you to answer that. I am just making an observation.

Mr. ARMINGTON. Well, sir, I am just a manufacturer, and that is just the machine tools for moving dirt that have been used by a small contractor effectively.

Senator O'MAHONEY. That's right, and I am delighted that you have been here this morning. I am going to ask you to leave these pictures with the committee as a permanent exhibit. You will do that, will you not?

Mr. ARMINGTON. Oh, certainly, sir.

The next picture I would like to show you is a log hauler. This is operating in British Columbia, a relatively new development.

Senator O'MAHONEY. What do you mean, the log hauler is a new development?

Mr. ARMINGTON. For the Euclid division, a relatively new development.

Senator O'MAHONEY. When you say "relatively" what do you mean?

Mr. ARMINGTON. Within the last few years.

Senator O'MAHONEY. Since 1953 or before?

Mr. ARMINGTON. We were working on that prior to 1953. We were working on it prior to that, but most of the progress has been made since then.

Senator O'MAHONEY. Producing or designing?

Mr. ARMINGTON. Attempting to promote in the area, but the progress has been made relatively since that date.

The next photo I would like to show you is a coal hauler. This is used in strip mining coalfields, bituminous coalfields, in the Middle West. It hauls 50 tons, up in that area.

Senator O'MAHONEY. I have seen bigger ones in Wyoming.

Mr. ARMINGTON. The next photo is an experimental machine that was built in the early fifties. It is a rubber-tired bulldozer, 300 horsepower. We have been experimenting with that now for about 5 years. We have not yet produced it in production.

Senator O'MAHONEY. There are bulldozers and bulldozers.

Mr. ARMINGTON. That's right. The next one is a smaller rubber-tired bulldozer. Again it is the same type of development. We have been working on it for about 5 years, but have not yet gotten it to the point that we can sell it commercially. These pictures that I have shown you up to this time are products that were developed prior to Euclid's acquisition by General Motors. I would like to now show you some pictures of products that have been developed since that time. This is a small 7-yard scraper on the New Jersey Turnpike. The next one I would like to show you is a 12-yard scraper.

Senator O'MAHONEY. Is this one of the new products?

Mr. ARMINGTON. Yes, sir. All of these products now have been developed since Euclid was acquired by General Motors.

Senator O'MAHONEY. Was that New Jersey scraper one of the new products?

Mr. ARMINGTON. Yes, sir. That one was operating in New Jersey, the last one. This one is in Minnesota on a highway project.

Senator O'MAHONEY. This is a 12-foot scraper?

Mr. ARMINGTON. Twelve cubic yards, sir.

Senator O'MAHONEY. That can certainly tear the dirt away, can't it?

Mr. ARMINGTON. These two machines that I have just shown you, the S-7 and S-12, 7-yard and 12-yard capacity, represent improvements over machines that have been previously built by other manufacturers.

I would like next to show you our S-18 scraper. This is working on a parking lot, grading a big parking lot for some factory. I don't know where it is located. This again represents an improvement over the scraper built by other manufacturers.

I would next like to show you a picture of our twin-power scraper, again a new machine developed completely since Euclid was acquired by General Motors. This was taken on the Indiana Turnpike. Pushing that scraper is the new Euclid TC-12 crawler tractor.

This is the Euclid TC-12 twin-power crawler tractor. Now, all of these new machines developed since acquisition of Euclid by General Motors have been developed entirely since that time. Not a line was on paper prior to Euclid's acquisition.

Senator O'MAHONEY. This is an utterly new crawler.

Mr. ARMINGTON. Yes, sir.

Senator O'MAHONEY. In what respects does it differ from the previous crawlers?

Mr. ARMINGTON. Made by previous manufacturers? There are two engines. The tractor is made in two halves. There is a transmission, a quick-shifting transmission hydraulically operated, a torque converter. Each half can be maneuvered separately as compared to the other half, making it possible to turn the tractor on a dime. It can move forward at full speed and be reversed almost immediately. It is extremely maneuverable. That is, as far as functions are concerned.

And then as far as power is concerned, it is I would say at least half again as big as the largest tractor that has even been made, and approximately twice as big as tractors that were in production prior to Euclid's acquisition by General Motors.

Senator O'MAHONEY. How much does it weigh?

Mr. ARMINGTON. It weighs about 28 tons.

Senator O'MAHONEY. I would like to see that dime it turns on.

Mr. ARMINGTON. It is extremely maneuverable, sir, more than any other tractor on the market.

That completes the display of our models, sir.

The Euclid Road Machinery Co. was formed in 1931. Its business had been carried on formerly as a department of the Euclid Crane & Hoist Co. My father had an active part in starting the parent company in 1907. After graduating from MIT in Boston, he came to Cleveland to teach at Case Institute. He soon wished to get experience in industry and became associated with manufacturers of overhead traveling cranes and hoists.

In 1907, he led in the organization of the Euclid Crane & Hoist Co. to produce overhead traveling cranes and electric hoists.

Around 1915, he constructed a crawler tractor. While it was never commercially successful, I well remember its being used on a farm near our home. He soon found that the project was far too big to be undertaken by an organization as small as the Euclid Crane & Hoist Co. which employed less than 100 people. Crawler tractors, with their continuous chain track rather than rubber-tired wheels, are a very complex and difficult piece of machinery to manufacture. Consequently, the development was abandoned.

My older brother, Arthur, joined the company in 1917 as factory manager. Having followed father's crawler-tractor experiment, Arthur became keenly interested in the tractor field. He constructed several wheel tractors which, of course, were much simpler than a crawler tractor. And again this development was abandoned as it soon became obvious that it was too large a business for a small company.

The tractor industry was developing rapidly in the early twenties. Arthur, still having a keen interest in the tractor field, saw that if he could not make the crawler tractor, there was still the possibility of developing equipment to be used with tractors. A small one-half cubic yard drag-type scraper was developed. This was followed by a 1¼-yard wheel scraper. Even these limited developments were not easy. The company simply did not have the financial resources to place experimental scrapers in the field, bring them back into the plant

when failures occurred, again send them out into the field and go through the long development program necessary to perfect them.

I well remember, sir, one evening at home in our kitchen, my brother Arthur in a very heated conversation with my father. Father said, "There is no more money, you have lost money long enough, we are going to stop this."

Well, Arthur pleaded, and finally father said, "Well, you can have \$10,000 more on this development." That is how close this development was to being abandoned.

But somehow or other the program was fought through and the scrapers became well accepted by the contractors using them.

Euclid's sales experience soon proved that we could not hope to distribute our limited line through a dealer organization established to handle our products alone. It was necessary to cooperate with one tractor producer and his respective dealers rather than attempting to set up our own dealers. This plan of working with a single manufacturer's dealer organization proved to be a successful one.

Mr. BURNS. Will you tell us what the name of this other manufacturer was, whose dealers you used?

Mr. ARMINGTON. Caterpillar Tractor Co.

Mr. BURNS. And how long did you continue to sell your products through the dealers who also handled the Caterpillar tractors?

Mr. ARMINGTON. This is an estimate on my part. I would think about 6 or 7 years.

Mr. BURNS. About what dates would that cover?

Mr. ARMINGTON. I would think from perhaps 1927 to 1933. I may be off a year or two on that.

Mr. BURNS. Then did you give up entirely using the Caterpillar dealers?

Mr. ARMINGTON. Yes, sir. That develops later in this discussion, the reason why that had to be done.

Mr. BURNS. Go ahead.

Mr. ARMINGTON. The company developed rapidly through the late twenties and into the early thirties. The equipment Euclid was building actually made the tractors much more useful to the buyer. I am sure that it resulted in the tractor sales volume being increased.

In the early thirties, volume became very slow and the need for additional markets was great. The situation was pretty rough. I remember at that time, I was relatively new at the organization, my job was factory manager, but I also acted as purchasing agent and cost clerk. That continued for a couple of years. That is how we were working through that 1932 period.

In trying to solve this desperate need for volume, the possibility of building a line of self-powered dirt haulers was visualized. Earth handling at that time was done either by light-duty, high-speed highway dump trucks or by very low-speed crawler tractors pulling wagons or scrapers of the type that Euclid was then manufacturing. The possibility of building a high-speed, heavy-duty, rubber-tired hauling unit as a complete integrated off-the-road truck or machine was a daring undertaking for the small Euclid organization.

Again, if I might just elaborate on that, the first self-powered Euclid was a Chevrolet truck with the chassis shortened and a heavy axle put under it, semitrailing a hopper from an old Euclid crawler wagon that had rubber tires mounted on the rear of it. Well, it

wasn't any good, but we kept on with it until we got somewhere. The lack of finances made the undertaking very difficult.

We required new types of tires, much larger low pressure tires than then available, new powerful engines, new transmissions and new equipment designs—many of which were provided by companies much larger than Euclid, with the financial and engineering ability to develop these components. Above all, during 1933 to 1938, still depression years, it required a great deal of perseverance and long-range courage for tire, engine, and transmission companies to put up development money. The market was small; the equipment had growing pains; each sale was a struggle.

During the early thirties, the organization had difficulty paying its debts and was forced to borrow money, using a large part of its accounts receivable as security.

As the self-powered hauling unit became accepted in the field, it became competitive to crawler tractors. It was apparent that it could not be sold through the crawler tractor dealer organization through which Euclid had formerly merchandised its products. That answers your question.

This made it necessary to develop an entirely new system of selling. New dealers were appointed wherever satisfactory ones could be found, and in many areas the company resorted to direct selling to customers in those areas where it was impossible to get interested and capable dealers.

Volume dropped off in late 1937 and a number of our customers found it impossible to keep up with the payment of their notes which had been given in payment for the equipment. Since we had borrowed money on these notes, it was necessary for us to repurchase them from the banks. The company was unable to do this and a creditors' committee was formed in late 1937 to take over management of the company and try to solve the problem.

I remember that very well. I had been in charge of the factory at that time, and when we fell into that jam, I became the general manager; I soon had a boss, and it was simply no fun answering the telephone and trying to tell people why you could not pay your bills; I remember it very well, and I did not sleep very well.

It is an interesting thing. The creditors' manager, who was very cooperative, made the remark to me at the time that he thought that tractors, that self-powered units, were too big a job for such a small company as we were, and that we would be much better off if we could drop that tractor end of it and just stay with trailers and the smaller type of products.

By curtailing every possible expense, including a severe cutback of the development program, the company was able to pay all of its obligations in about 2 years. The creditors' committee was dissolved and the company once more returned to our ownership.

During that period I acted really as general manager, but under the supervision of the representative from the creditors' committee who, of course, was actively responsible for what happened.

By the end of World War II, the company had built up a large unfilled-order position and deliveries were so slow that drastic action was needed. At this time, we employed about 300 people. Our net worth was approximately \$3 million. The company decided to under-

take a major expansion program, and, to finance this, borrowed heavily from local banks. By 1948, the plant had been doubled in size. It doubled again in size successively in 1950 and 1952. Volume increased just about proportionately.

During 1946, the company borrowed \$1½ million, or approximately one-half of its net worth. This was reduced in 1947 and 1948—

Senator O'MAHONEY. When was that last borrowing?

Mr. ARMINGTON. In 1946, Senator.

Senator O'MAHONEY. 1946.

Mr. ARMINGTON. This was reduced in 1947 and 1948 but increased again in 1949, this time up to \$2 million.

This loan was completely repaid in 1950.

In further expansion in 1951, the borrowing reached \$6 million; in 1952, \$6½ million; in 1953 it reached a peak of \$6,800,000. By 1952, the net worth had grown to approximately \$16 million; the employment was then 1,526 people.

Senator O'MAHONEY. So the picture you have is that at the end of World War II, with a net worth of approximately \$3 million you employed 300 people. You borrowed heavily from local banks; you doubled in size by 1948, and you doubled again in 1950 and again in 1952?

Mr. ARMINGTON. Yes, sir. It was a very rapid expansion.

Senator O'MAHONEY. Making a very rapid expansion.

Your volume was increasing all the time so that while it was necessary for you back in 1946 at the end of World War II to borrow one-half of your net worth, you were able to pay that back in 1947 and 1948; your volume increased in 1949, and this time you borrowed \$2 million; that you repaid in 1950; then you expanded further in 1951 when your borrowing had reached \$6 million; in 1952 you borrowed up to \$6½ million; and in 1953, \$6,800,000; all the while your net worth was increasing, and in 1952 it had grown to a \$16 million corporation employing not 300 people as it did at the end of the war, but 1,526.

Mr. ARMINGTON. Yes, sir.

Senator O'MAHONEY. That is a dramatic story of the increase in size of an independent company borrowing from local banks.

Mr. ARMINGTON. Yes, sir.

Even though the percentage of borrowing to net worth had dropped from 50 percent to 42 percent, it was becoming increasingly difficult to get out of debt.

It continued to be difficult to get aggressive dealers since the company's sales were usually made to specialized users such as the mining and quarry industry or to contractors who had large projects. There was little continuous market.

I want to emphasize that much of our growth came only through the need for our equipment on large major earth-moving projects such as earth-fill dams, contracted by the Corps of Engineers and Bureau of Reclamation, or specific roadbuilding or airport-construction programs, all of which were inaugurated by various governmental agencies, or mining and industrial projects such as furnishing copper, coal, iron ore, and such raw materials. The company was dependent, to a large extent, on big, specialized sales.

I would like to clarify that a little. In 1953 the average number of machines sold by each of our dealers was 23 machines. One-third of our dealers in 1953 sold 81 percent of our machines. Sometimes a complete year would go by in a dealer's territory where he had no big project, and he would not even sell one machine.

Our principal product, off-highway dump trucks, are specialized machines. Only 1,500 are produced annually by 7 main suppliers. This is comparatively less than 1 percent of the over 1 million highway trucks built annually in the United States.

Mr. BURNS. Would you give us the names of those seven suppliers who produced those off-highway dump trucks?

Mr. ARMINGTON. Well, Dart Truck Co., Mack Truck, Kenworth Truck, LeTourneau-Westinghouse, Caterpillar, through their association with the Athey Products Co., who made trailers for use with them; International Harvester, and Allis-Chalmers.

Mr. BURNS. Go ahead.

Mr. ARMINGTON. With such a limited volume commercially, it was most difficult to support development work in other lines of earth-moving equipment and even in our own limited field of wheeled machines. A new off-highway model may require as much as 3 years' field usage before all mechanical problems are solved and the product can be sold commercially.

Actually that again is off the cuff. That was a very conservative statement because many times it would take as much as 5 years, and some of the more complicated machinery I have seen it took as long as 10 years for a company to get it developed.

For these machines must work in rock and over rough roads, at both slow and high speeds, and in all climates and altitudes.

You just cannot put out 1 or 2 machines in this game and get them perfected. You have got to put a large number of them out under a variety of circumstances and work them over several years to actually get a product that is trouble-free to the buyer.

With such a product in such a market, the number of sales transactions possible per year in the average dealer territory was quite small, as I mentioned.

The need for our getting into the crawler tractor field, with a general line of products to support product research and a more complete sales organization, became more and more obvious to us.

At this point, I should describe briefly the competitive situation which Euclid was facing in the earth-moving equipment industry as it reached the years 1952 and 1953. Euclid was one of the smaller companies in the industry with about 5 to 6 percent of the business.

Senator O'MAHONEY. That is an overall statement?

Mr. ARMINGTON. That is an overall statement of the earth-moving industry, sir; a billion-dollar industry, where we were doing about \$50 million.

Senator O'MAHONEY. That reminds me that in your earlier testimony you said the Euclid Road Machinery Co. was formed in 1931, and then you told about the building of the crawler tractor, and you told about the building of the scrapers and the like, and your struggles in doing that.

Were there other companies operating at the same time, doing the same thing?

Mr. ARMINGTON. Yes.

Senator O'MAHONEY. Do you want to give us the impression that the Euclid Road Machinery Co. was the pioneer in the tractor or in the scraper?

Mr. ARMINGTON. I would like to give the impression that we were the pioneer in the high-speed, self-powered, heavy-duty haulage industry off-the-highway, of course; in other words, that market that fell between the slow-speed crawler tractor and wagon and the high-speed dump truck. I feel our company was decidedly the pioneer in that area.

Senator O'MAHONEY. What was Caterpillar doing all this time?

Mr. ARMINGTON. That takes us back to the early thirties, sir.

Senator O'MAHONEY. Yes.

Mr. ARMINGTON. Caterpillar during that period—we were then out of the Caterpillar dealer organization—their salesmen were telling the customers that this rubber-tired equipment could not get through the wet materials, and it just was not practical, and it would soon be abandoned. I remember that very well. That was in the early years.

As the years progressed they recognized it, and Caterpillar proceeded to build bottom dump machines in the late thirties, as I recall it, early forties.

Senator O'MAHONEY. Were there any other companies that were developing similar material?

Mr. ARMINGTON. Yes, sir. I recall very well that the Allis-Chalmers Co. produced a bottom dump earth hauler, I imagine about 1935, and built a few of them; they called it their Spade Ace.

They abandoned it in a few years because they did not think that it was worth while going ahead with it.

Senator O'MAHONEY. You had competitors all during this time?

Mr. ARMINGTON. Yes, sir.

Senator O'MAHONEY. Did you not?

Mr. ARMINGTON. Yes, sir; but they did not stay with it.

In the rear-dump field we had Mack, White, International Harvester, and Hug. In the bottom dump field we also had Koehring; we had competitors during that era, but they did not seem to follow through. It is very difficult—

Senator O'MAHONEY. You mean on off-the-highway?

Mr. ARMINGTON. On this development, on this specialized field. It takes a lot of effort to get the products trouble free, sir.

Senator O'MAHONEY. Yes; that is what I wanted to understand. It was not clear to me whether you were talking of a field in which you were practically working alone.

When you speak of your specialized machines, I take it you meant machines in which your company was really doing the only real work, or were you?

Mr. ARMINGTON. I was thinking more in terms of the end product that these large dams and large earth-moving products—these machines were not produced in large volume, sir. I call them specialized. It is not like a crawler tractor, where there are thousands of them built in a year.

Senator O'MAHONEY. Did you have any competition in the building of those machines for construction of dams?

Mr. ARMINGTON. Some, but the competitors never made any real progress against us; they did not follow through.

Senator O'MAHONEY. Then you wish us to understand that in the field of certain of these machines, you had a practical monopoly so far as earth-fill dams were concerned?

Mr. ARMINGTON. We were able to do better than our competitors in that period.

Senator O'MAHONEY. Then you did have competitors in the field?

Mr. ARMINGTON. Well, they made repeated efforts to get in, but the field—

Senator O'MAHONEY. But you said they did not follow through. Did they or did they not? Did you have competitors all the time or not? I do not know; I am just trying to find out.

Mr. ARMINGTON. Yes, sir. We had competitors on and off during the early period. We had one competitor for a while, then another, and then another. There was somebody always in there trying to get the business.

Senator O'MAHONEY. Well, the Corps of Engineers and the Bureau of Reclamation and the contractors that worked under them did not have to depend upon you alone for this type of machinery during this period?

Mr. ARMINGTON. There was other equipment available, but—

Senator O'MAHONEY. That is all I am trying to find out, sir.

Mr. ARMINGTON. All right, sir.

Mr. BURNS. Senator, may I ask a question about those figures?

You said that there were 1,500 off-highway dump trucks produced annually by seven main suppliers, and then you gave us the names of seven companies other than your own. How many did you company make annually?

Mr. ARMINGTON. Well, that varied over the years. This is just an average figure to compare the size of this specialized industry as compared to the main truck industry.

Mr. BURNS. What percentage of this particular specialized market were you making?

Mr. ARMINGTON. I would say we were on an average 50 percent or better on that, because if you would take all of the—the entire off-the-highway haulage market, then we were able to do better than 50 percent.

Mr. BURNS. What percentage of your total business was in this off-the-highway haulage market?

Mr. ARMINGTON. I would say substantially all of it up to 1950.

Mr. BURNS. Up to 1950 substantially all of your business was in this field in which you had—

Mr. ARMINGTON. Yes, sir.

Mr. BURNS. Fifty percent or better of the market? So that this 1,500 was produced by the other suppliers and you produced 1,500 or more, so that there would be about 3,000 units in that industry; is that what you mean?

Mr. ARMINGTON. No; I do not think that is the meaning.

Mr. BURNS. Well, the sentence is only 1,500 are produced annually by 7 main suppliers, and you named 7 companies, excluding your own company, and we want to make sure we have the figures correct.

Mr. ARMINGTON. That would be the complete industry in a very narrow segment, in the rear dump segment.

Senator O'MAHONEY. I think you will want to change that sentence, to be fair to you.

Let me point out what we are discussing here. Will you look at page 8?

Mr. ARMINGTON. Yes, sir.

Senator O'MAHONEY. The top paragraph:

Our principal product off-highway dump trucks are specialized machines. Only 1,500 are produced by 7 main suppliers.

Mr. ARMINGTON. Yes, sir.

Senator O'MAHONEY. I understood you to mean by that that of your principal product, off-highway dump trucks, only 1,500 are produced annually by the whole industry.

Mr. ARMINGTON. Yes, sir.

Senator O'MAHONEY. And you named seven suppliers.

Mr. ARMINGTON. Yes, sir.

Senator O'MAHONEY. Then when Mr. Burns asked you to identify the 7, you named 7 companies, but not your own. The companies you named were Dart Truck, Mack Truck, LeTourneau-Westinghouse, Caterpillar Tractor, International Harvester, Kenworth Motors, and Allis-Chalmers. If your testimony stands that way——

Mr. ARMINGTON. I will have to make it eight.

Senator O'MAHONEY. You would have to make it eight or else you are excluded.

Mr. ARMINGTON. All right. Let us make it eight.

Senator O'MAHONEY. What do you want to do with 1,500? Are you going to double that to 3,000 now?

Mr. ARMINGTON. We will have to leave it eight and leave it 1,500.

Senator O'MAHONEY. You will have to leave it 1,500?

Mr. ARMINGTON. Yes, sir.

Senator O'MAHONEY. Then do you want us to understand that of the 1,500, you were producing 750?

Mr. ARMINGTON. No, sir; we were producing more than that.

Senator O'MAHONEY. How many were you producing?

Mr. ARMINGTON. We varied in production over the years.

Senator O'MAHONEY. Well, suppose you look up the facts and alter the paragraph to fit the facts——

Mr. ARMINGTON. All right, sir.

Senator O'MAHONEY. As you want us to understand it. We will give you that time.

Mr. ARMINGTON. All right, sir.

Senator O'MAHONEY. Proceed with the rest of your statement.

Mr. BURNS. May I ask you this question: Did you have as much as 75 percent of the market in this particular type of dump-truck business?

Mr. ARMINGTON. In certain years, I am quite sure we did. I think that is where we are getting into trouble here. This is not tied down to a certain year. I think we have got to do some research work on it.

You see the whole thing altered from years to year, and think that we must get additional information together to clarify this question.

Mr. BURNS. But you were the leading company in this field and produced anywhere from 50 to 75 percent annually of the total production in that field.

Mr. ARMINGTON. If we take the rear dump field alone, the rear dump trucks alone, your statement is correct, sir. But if you take the overall haulage field, I think it would be nearer the 50 percent.

Mr. BURNS. I don't know what you mean by "overall haulage field."

Mr. ARMINGTON. By that I mean the whole thing, I mean log hauling and all the different specialized off-highway haulage fields that come into play.

Mr. BURNS. I see. So that is taking haulage as one of the types of earth-moving equipment. You refer later to 5 or 6 percent of the business for the entire earth-moving industry.

Mr. ARMINGTON. That is correct.

Mr. BURNS. Including many products that you did not make at all.

Mr. ARMINGTON. Yes; that's right.

Mr. BURNS. So your 50 percent would be of all of the haulage equipment that you made and 75 percent or more would be the dump trucks?

Mr. ARMINGTON. Just the plain dump truck, rear dump truck.

Mr. BURNS. Rear dump truck.

Mr. ARMINGTON. That is exclusive of bottom dump too, you see. You have got that problem in there.

Mr. BURNS. What was the relationship of your position in the bottom dump trucks to the remainder of the industry?

Mr. ARMINGTON. That varied as the years progressed again. Caterpillar came into the bottom dump field and made serious inroads in that field, particularly after 1945.

Mr. BURNS. But it is clear, is it not, that your principal production where you did 90 percent or more of your business was in this field of dump trucks where you had as high as 75 percent annually of the total business.

Mr. ARMINGTON. Yes, sir.

Senator O'MAHONEY. I am inclined to say, Mr. Burns, I think the statement is more confused now than it was. Let's read the whole paragraph:

Our principal product, off-highway dump trucks, are specialized machines.

There is no misunderstanding the meaning of that sentence. It means that your principal product was off-highway dump trucks; does it not?

Mr. ARMINGTON. Yes, sir.

Senator O'MAHONEY. Then you say:

Only 1,500 are produced annually by 7 main suppliers.

You want to change that to 8 now, and you still stay with 1,500. Then the next sentence:

This is comparatively less than 1 percent of the over 1 million highway trucks built annually in the United States.

So you see I cannot understand why, in answer to Mr. Burns, you should suddenly come to talk about over-the-road haulage. You were talking about specialized machines and then you are talking about over-all haulage machines, and that paragraph is more confused than it was at the beginning, so please go over it again, will you? Get your figures and tell us how many of these machines you did produce.

Mr. ARMINGTON. We will check into that.

Senator O'MAHONEY. Either you are a big one or you are a little one.

Mr. ARMINGTON. Shall I proceed while that is being checked on?

Senator O'MAHONEY. Yes, please, unless Mr. Burns has some other questions.

Mr. BURNS. Go ahead.

Mr. ARMINGTON. At this point, I should describe briefly the competitive situation which Euclid was facing in the earth-moving equipment industry as it reached the years 1952 and 1953. Euclid was one of the smaller companies in the industry with about 5 to 6 percent of the business; in the dump-truck field, in which Euclid pioneered, it was one of the major producers with approximately 50 percent of the—I will have to specify now—off-the-highway haulage business; but this was in a very narrow segment of the market. In contrast to the 1,500 dump trucks produced annually, almost 50,000 crawler tractors were produced annually, and for this much larger market, Euclid had no product and therefore did not participate.

Mr. BURNS. Were there other products in this total business that you have referred to in which you had 5 or 6 percent, besides crawler tractors which you did not make?

Mr. ARMINGTON. I don't know that I am completely clear on what you mean.

Mr. BURNS. You were in a particular business and you were increasing rapidly in size and sales, and that business was selling this off-highway haulage equipment, principally rear-dump trucks. Now you are referring to some total business of which you were a very small segment. What was this total business that you are referring to? What products did it make that you did not make?

Mr. ARMINGTON. Oh, the complete earth-moving industry, crawler tractors, scrapers, motor graders.

Mr. BURNS. Would you include bulldozers?

Mr. ARMINGTON. Oh, yes; that goes with crawler tractors.

Mr. BURNS. Were there several products in this earth-moving business that you did not make but which other companies did make?

Mr. ARMINGTON. How is that again, sir?

Mr. BURNS. Were there several products used in the earth-moving business which other companies made which you did not make?

Mr. ARMINGTON. On, sure; many products.

Mr. BURNS. Well, is it your point that you wanted to get into the manufacture of all these other products?

Mr. ARMINGTON. Well, the point that I am leading up to in this is that our distribution problem was a difficult one.

Mr. BURNS. With your dump trucks?

Mr. ARMINGTON. Well, our distribution problem, that was our major problem, sure. The problem is how could we get first-class dealers when we were only competing in 5 or 6 percent of the total field, that was our problem.

Mr. BURNS. You were increasingly successful in the business in which you were engaged up to that time; were you not?

Mr. ARMINGTON. That's right. We were able to keep our product out ahead, and we were quite successful.

Mr. BURNS. Then from 1946 to 1952, a period of 6 years, you had increased your net worth over 500 percent, from 3 million to 16 million; is that right?

Mr. ARMINGTON. That's right, sir.

Mr. BURNS. And I assume that was based on increasing sales. Do you have the figures of total sales for that period?

Mr. ARMINGTON. Yes; I do.

Mr. BURNS. Would you mind letting us have those. In what form do you have them?

Mr. ARMINGTON. Well, they are just on scratch paper.

Mr. BURNS. Why don't you read them by years into the record?

Mr. ARMINGTON. I could read them in round numbers.

In 1945 the net sales were \$10 million; in 1946, \$17,500,000; in 1947, \$32,800,000; in 1948, \$31,200,000; in 1949, \$22,700,000.

Mr. BURNS. What was that figure in 1949?

Mr. ARMINGTON. \$22,700,000 in 1949; 1950, \$31,400,000; 1951, \$53 million; 1952, \$33 million.

Mr. BURNS. Thirty-three million?

Mr. ARMINGTON. Yes, sir. After that it was only a part of the year in 1953, and then we were acquired by General Motors, and I don't have that information here.

Mr. BURNS. What were the figures in the 2 years since you were acquired by General Motors?

Mr. ARMINGTON. I don't have that information with me.

Mr. BURNS. I think we were given a figure by General Motors for the dollar volume of Euclid division's sales from October 1, 1953, which is the date of acquisition, through September 30, 1955, \$108,-762,651.

Now, most of this increase from 1945 to 1953 was in this field in which you specialized, the dump-truck business, was it not?

Mr. ARMINGTON. That's right, sir.

Mr. BURNS. As you had been increasing your plant facilities, was the purpose of increasing it in order to have more facilities for producing this type of equipment?

Mr. ARMINGTON. Yes, plus, of course, the plans for continued expansion of product development as indicated by this rubber-tired bulldozer that we showed you pictures of.

Mr. BURNS. So that you were increasing the size of your plant, you were borrowing money to do that, and were making more and more of these dump trucks throughout this period?

Mr. ARMINGTON. Well, the volume was substantially rear dumps and it fluctuated as shown by these figures.

For instance, in 1952 our volume was 33 million; in 1948 it was 31 million; in 1947 it was 32 million.

Mr. BURNS. Was a lot of war business involved in that 1951 figure?

Mr. ARMINGTON. I think there probably was, I don't recall definitely. I would assume that that was a factor probably both directly and indirectly, most indirectly.

Senator O'MAHONEY. If I understand your explanation now, it is this. In the whole industry of earth-moving equipment, you were a very small company.

Mr. ARMINGTON. Yes, sir.

Senator O'MAHONEY. You were doing not more than 6 percent of the entire business.

Mr. ARMINGTON. That's right.

Senator O'MAHONEY. Of earth-moving equipment, because your efforts were practically confined to the production of off-highway dump trucks. In this particular field your sales amounted at the time, 1951-52, to about 50 percent of the total production, which was only 1,500 annually.

Mr. ARMINGTON. I would like to have the opportunity of rechecking that 1,500 figure and trying to see if we can't develop it by years so that it provides more definite information.

Senator O'MAHONEY. You have used it twice here. You used it first on top of page 8 and then you used it the second time on the top of page 9 in the sentence in which you say:

In contrast to the 1,500 dump trucks produced annually, almost 50,000 crawler tractors were produced annually.

For this much larger market you said:

Euclid had no product and therefore no business.

Mr. ARMINGTON. Yes, sir.

Senator O'MAHONEY. That is why it comes about that you can tell us that you were one of the smaller companies in the whole earth-moving equipment because you were producing only about 50 percent of the off-the-highway dump trucks that were produced by the whole industry. That amounts to what your statement is, doesn't it? I have tried to summarize it as I understand it from reading and listening to you.

Mr. ARMINGTON. I would like to correct that 50 percent to say off-the-highway haulage and not limit it to dump trucks.

Senator O'MAHONEY. Off-the-highway haulage?

Mr. ARMINGTON. Yes, sir.

Senator O'MAHONEY. And that would necessarily make you change the 1,500 dump trucks to include the off-the-highway haulage.

Mr. ARMINGTON. Sir, I would like to have the opportunity of reviewing the 1,500 and tying it into definite years if we can develop the information, because this statement of 1,500 was only put in here to show the contrast between the approximate size of this dump-truck industry and these other big industries.

Senator O'MAHONEY. You may have that opportunity; we have no objection to that at all.

Mr. ARMINGTON. I would like to just explain one more thing. I have never been completely clear on this classification of these statistics, and I believe they come from certain governmental departments, and I think there is some confusion even there in the origination of those statistics.

Perhaps I shouldn't have put this in here, but I did want to indicate the contrast between the small dump-truck industry and the big highway-truck industry on one hand and the small dump-truck industry and the big crawler tractor market on the other hand.

Senator O'MAHONEY. I understand that. We are agreed, however, on this, are we not: That you intend to say that by the years 1952 and 1953 you were one of the smaller companies doing only 5 or 6 percent of the whole business.

Mr. ARMINGTON. Yes, sir.

Senator O'MAHONEY. And that there was a much larger market for which you were producing no equipment of any kind, and you wanted to get into that.

Mr. ARMINGTON. Yes, sir.

Senator O'MAHONEY. Because you say in the next paragraph:

On the other hand, by 1952, each of Euclid's principal competitors were in the off-highway truck field.

That was your field?

Mr. ARMINGTON. Yes, sir.

Mr. O'MAHONEY. And then you say:

It seemed to me that for Euclid to grow and succeed in its business, it had to get into the crawler tractor field.

Mr. ARMINGTON. Yes, sir.

Senator O'MAHONEY. I think we understand one another now as to what the position was.

Mr. ARMINGTON. Yes, sir.

Mr. BURNS. I think it would be useful if we are going to obtain those figures from records, to let us have the total production that they have made of each of these types of equipment separating them.

Senator O'MAHONEY. Oh, by all means.

Mr. BURNS. So we know which are the dump trucks, how many are rear dump trucks, how many are bottom and the other types of equipment. And also to the extent that they have that information available, how that compares with the rest of the industry both in units and percentage.

Mr. ARMINGTON. Shall I continue, sir?

Senator O'MAHONEY. If you please, but produce this material.

Mr. ARMINGTON. We will develop it.

Mr. BURNS. There is one more thing I would like to make sure I understand. During the time that you increased these sales from 10 million to 50 million annually, your plant had redoubled in size in 1948, in 1950, and 1952, so that your capacity in 1952 and 1953 was about 8 times what it was in 1946.

Mr. ARMINGTON. No.

Senator O'MAHONEY. The net worth had doubled.

Mr. ARMINGTON. Again, those were just general statements. You have the exact mathematics here on the sales now from what I have given you, so you can get it from there.

Mr. BURNS. But on page 6 you pointed out that there was a major expansion program and that the plant doubled in size in 1948, doubled in 1950, and doubled in 1952.

Mr. ARMINGTON. Yes, sir.

Mr. BURNS. Does that mean that the plant—

Mr. ARMINGTON. Square footage size; yes.

Mr. BURNS. So it was about 8 times as large in 1952.

Mr. ARMINGTON. Floor area, that's right, sir, and volume increased almost as much proportionately. Actually, there are so many peaks and valleys in this thing that it is pretty hard to work it back.

Actually, in my own figures in developing this, I based it on 1944, which, as I recall it, was the sales volume nearest seven and a half million dollars. It comes out a little bit nearer in the mathematics.

Mr. BURNS. One further question with respect to 1952 and 1953 before you proceed. At that time what was the outlook for the continued sale of these heavy-duty dump trucks in the market?

Mr. ARMINGTON. In what year, sir?

Mr. BURNS. In 1953, at the time of this merger.

Mr. ARMINGTON. Our competition is increasing, but the outlook for the industry remained good.

Mr. BURNS. Was there evidence of large roadbuilding and construction activities which would continue to require the type of equipment which you were selling?

Mr. ARMINGTON. There was a great deal of talk along that line.

Mr. BURNS. And the prospects were for an expanding, rather than for a contracting, market?

Mr. ARMINGTON. I would think so, in keeping with the growth in the economy generally. Shall I continue?

Mr. BURNS. Was there any special type of equipment involved in this 1951 year where you had the 53 million of sales? Was there war-time equipment involved there which wasn't repeated in 1952?

Mr. ARMINGTON. I don't think to any substantial degree. There was an order for tow tractors to pull heavy airplanes in the picture in one of those years, but I don't recall just what year it was in, but I would say no substantial business that is not part of our regular line.

Mr. BURNS. Were there scrapers? When did you begin to make the scrapers?

Mr. ARMINGTON. They came in to a small degree, in 1950 and 1951, as I recall it.

Mr. BURNS. And your plant was equipped to manufacture scrapers?

Mr. ARMINGTON. We were just getting started in those years.

Mr. BURNS. You hadn't done much, but you did have the equipment. You were actually in production.

Mr. ARMINGTON. You can use substantially the same equipment used on the other products.

Mr. BURNS. And the loaders, were those in production? How long were those in production prior to—

Mr. ARMINGTON. I think they were introduced shortly after the war, about 1945.

Mr. BURNS. These figures, just to continue with this dump-truck business, these figures we have with respect to the 2 years since the acquisition of 108 million which, divided, would be approximately 54 million, although it may not have been in proportion, was the bulk of the sales in those 2 years also in this dump-truck business?

Mr. ARMINGTON. There was an increasing percentage of scrapers in that period, and of course the new products came into play also in more recent months of that period.

Mr. BURNS. During this period up until September 30, about what proportion of your total sales was still in this dump truck off-the-highway business which was your principal product prior to the merger?

Mr. ARMINGTON. I think I would have to develop that information for you. I can't—

Mr. BURNS. Would you add that to the other statistics you are going to supply?

Mr. ARMINGTON. Yes, sir.

Mr. BURNS. With respect to the loaders, were there other companies manufacturing them prior to the merger?

Mr. ARMINGTON. There was one company that did some experimental work or rather produced some small quantities of them, but I don't think they were very successful with it.

Mr. BURNS. Did your company have practically 100 percent of the loader business?

Mr. ARMINGTON. It was a very specialized business; yes. What little there was of it, we had most of the volume. I think it might be well to explain why we were ever building loaders in the first place.

Mr. BURNS. Go ahead.

Mr. ARMINGTON. If that is in order here.

Mr. BURNS. Yes.

Mr. ARMINGTON. We found that our bottom-dump dirt hauler was a very efficient tool. The limitation in the machine was getting the dirt put in the wagon, and we conceived of this idea of improving the old-fashioned elevated grader which is a side boom loader, bringing it up to date and making it a modern heavy-duty tool, that we could get the dirt placed in the wagons economically enough so that it would broaden the usefulness of the bottom-dump dirt hauler.

Actually the company had made practically no profit on loaders over the years. The main reason for bringing out the loader was to increase the sales of the bottom-dump dirt hauler, and it was also very good as an advertising tool because it was so spectacular with its ton-a-second loading capacity.

The loader in itself has been an unprofitable item for Euclid Road Machinery Co.

Mr. BURNS. But it did help to increase the sales of the——

Mr. ARMINGTON. Bottom dumps.

Mr. BURNS. Bottom-dump trucks.

Mr. ARMINGTON. Yes, sir.

Mr. BURNS. All right, will you go ahead then with your statement?

Mr. ARMINGTON. A comparison of Euclid's net worth in 1952 with the net worth of the three major crawler tractor manufacturers is listed as follows. Do you want me to name the companies?

Mr. BURNS. Yes, please.

Mr. ARMINGTON. Allis-Chalmers, \$188 million; International Harvester, \$680 million; Caterpillar Tractor Co., \$152 million; Euclid, \$16 million.

Senator O'MAHONEY. Let me intervene there to say that according to your previous statement Euclid, with a net worth at this time, 1952, of \$16 million, had grown more than 5 times in 6 years. Your original statement of net worth was \$3 million in 1946.

Mr. ARMINGTON. Yes, sir.

Senator O'MAHONEY. So that in 1952 you had grown to \$16 million, indicating that you were a small manufacturer engaged in a profitable business. Proceed.

Mr. BURNS. May I ask one question, Senator? You make the statement:

By 1952 Euclid's principal competitors were in the off-the-highway truck field.

Do you mean that they were gradually getting into this business when they had not been in it previously?

Mr. ARMINGTON. I don't think that we can simply tie this down to off-the-highway trucks.

I think you have got to look at the whole earth-moving industry, because the dealers that are selling Euclid off-the-highway trucks are also the type of dealer that would be selling all the rest of this billion dollars' worth of business.

Senator O'MAHONEY. But, Mr. Armington, Mr. Burns is just asking you for an explanation of your sentence.

Mr. ARMINGTON. Oh, I am sorry; I didn't get the point then.

Senator O'MAHONEY. Read the sentence. Look on page 9.

Mr. BURNS (reading):

On the other hand, by 1952, each of Euclid's principal competitors were in the off-highway truck field.

Mr. ARMINGTON. Yes, sir.

Mr. BURNS. I am asking whether these principal competitors were gradually getting into the field prior to 1952 when they had not been previously in it.

Mr. ARMINGTON. That's right.

Mr. BURNS. Who was in the field in 1952 that had not been in it previously, or at least had not been continuously in it but by 1952 had gotten into the field?

Mr. ARMINGTON. Allis-Chalmers was entering the field, International Harvester Co., they are all entering it. It is true that Caterpillar had been in it for years, but it is a matter of the aggressiveness with which they push the products, the new products that they develop.

Mr. BURNS. But Caterpillar was much larger than you throughout the time that you were growing in competition with them?

Mr. ARMINGTON. Much larger in what way do you mean?

Mr. BURNS. You put them down here to show that they have so much more net worth than you had?

Mr. ARMINGTON. That's right.

Mr. BURNS. But you said that although they were a competitor of yours, nevertheless you had been able to continually increase your business successfully in competition with Caterpillar.

Mr. ARMINGTON. Well, because they had not yet gotten aggressively into all of the products that we were manufacturing. They were just getting into the fringes of it.

The Caterpillar rear-dump machine is a combination of their bottom dump and scraper tractor pulling a rear-dump Athey rock wagon. They had not up to that time, as a matter of fact still have not, built a rear-dump machine that is exactly as our type of machine.

It is just a different approach to that yard of material to be moved.

Mr. BURNS. You say that it seemed to you that in order to grow it was necessary to get into the crawler-tractor field. What was there about the crawler-tractor field that made it necessary that you get into that one rather than any of the other products which your competitors were making?

Mr. ARMINGTON. Caterpillar were selling their bottom-dump haulers and selling their scrapers in volume against us, and they were putting, I would guess, 10 times as many salesmen in the field as we were; so it was a very difficult and competitive situation.

Senator O'MAHONEY. Would I be correct in drawing this conclusion from your testimony: That by 1952 you had come to the conclusion that unless you expanded into the crawler-tractor field your com-

petitors who were expanding into your field would be taking more of that business, and therefore you had to go into their field?

Mr. ARMINGTON. That was the problem that we were facing, but, of course, we were unable to enter their field because it would require a tremendous investment to do so.

Senator O'MAHONEY. That is right. That is the way I understood your statement, sir.

Mr. BURNS. Didn't you have this competition from these same companies with respect to the bottom-dump trucks throughout your existence?

Mr. ARMINGTON. Yes; but it is a matter of intensity. As I have said before, it takes years to develop these products, and the companies were coming into the field gradually, some with varying degrees of effort, but they were all getting into the act.

Mr. BURNS. Up till this time you still were far ahead of all the rest of them put together?

Mr. ARMINGTON. That's right. It takes so long to get into these businesses and get your products proven and accepted.

Mr. BURNS. Did you think that with all the success you had had in getting people to use your equipment that you couldn't retain that business because some other competitors began to sell in active competition?

Mr. ARMINGTON. I felt that it was obvious that if a competitor could put 10 times as many salesmen in the field as we could and had a product that was essentially as good as we had that we would be at a serious disadvantage. Shall I continue, sir?

Mr. BURNS. Yes; go ahead.

Mr. ARMINGTON. Resources of our competitors were thus 9 to 47 times larger, and our principal competitor had about 10 times the number of salesmen in the field selling its products and must have had a correspondingly larger engineering budget. According to financial publications, it had spent over \$100 million in expansion since the war, with more in the offing.

Senator O'MAHONEY. "It"?

Mr. ARMINGTON. Caterpillar.

For Euclid to undertake the complicated manufacturing and technological problems involved in producing the crawler tractor would have required additional capital of, well, as an estimate, let's say \$30 million, almost double Euclid's assets. It was just not in the cards to think that we could get this kind of money on our own. Lack of finances, together with the limited line of products and resulting lack of a strong distributor organization, was putting Euclid at a serious competitive disadvantage. The Euclid management was faced with the simple fact that it had not been able to keep up with the fast-growing construction-machinery industry and found its position, limited as it was to the narrow segment of off-highway hauling equipment, very insecure for the future.

Mr. BURNS. Do you mean to say that you had not been able to keep up with the construction-machinery industry in the face of these figures of continued growth throughout the period?

Mr. ARMINGTON. That's right. We had not been able to invade the crawler-tractor field while the crawler-tractor companies could invade our specialized field.

Mr. BURNS. But there was a lot more than the crawler-tractor field within this total industry that you had not tried to invade yet, had you?

Mr. ARMINGTON. That's right, sir, the motor-grader field. We were, however, entering the scraper field, just beginning.

Mr. BURNS. All right, go ahead.

Mr. ARMINGTON. In late 1952, one of the major crawler-tractor manufacturers approached us to discuss the possibility of joining with them. Euclid was interested but after several discussions the tractor manufacturer decided against it.

It became clear to me, however, that joining up with a larger company was the only solution to our problem. I approached another crawler-tractor manufacturer and also General Motors through their Detroit Diesel Division which supplied us with diesel engines.

General Motors also had the Allison torque converter transmission which provided the most advanced means for transmission of power in this heavy equipment.

About 6 months after my original exploratory talks with General Motors, we renewed the discussions and as a result Euclid's business was acquired by General Motors Corp.

Senator O'MAHONEY. Now may I make 1 or 2 inquiries here? What were the arguments that you used with the first major crawler-tractor manufacturer to persuade that manufacturer that the merger was desirable? I don't mean in detail, I mean just overall.

Mr. ARMINGTON. Well, frankly, I made no attempt to persuade them. They approached us.

Senator O'MAHONEY. What was their argument?

Mr. ARMINGTON. The reason they approached us, I believe, was because their dealers were at such a competitive disadvantage against Caterpillar. These dealers wanted to have both, they wanted to be assured of a rubber-tire line, a good aggressive rubber-tired line of products as well as a crawler-tractor line, and they pointed that out to the crawler-tractor manufacturer, and as a result of that pressure I think—it is an opinion—we were approached.

Senator O'MAHONEY. Why did the tractor manufacturer decide against the merger which he had opened the discussion on with you?

Mr. ARMINGTON. The only answer that they ever gave me was that they were not in a position to spend the money at that time.

Senator O'MAHONEY. Too much money?

Mr. ARMINGTON. But they wanted to consider it in the future.

Senator O'MAHONEY. Now, then, after that matter had been dropped, you say you approached another crawler manufacturer and General Motors on an exploratory basis?

Mr. ARMINGTON. Yes, sir.

Senator O'MAHONEY. What were the arguments used in those cases by you?

Mr. ARMINGTON. Sir, in the case of the other crawler-tractor company, I never mentioned in our discussion the possibility of our merging with them or being acquired by them. It was merely to be sure that we were exposed to the possibility or to be sure that no possibility was overlooked.

I was not out actually trying to peddle our company. I just wanted to be sure that if there was some feeling on the part of this tractor

company that they would like to go ahead, that they had that opportunity to raise their point, and they did not do so, sir. It was not discussed.

Senator O'MAHONEY. Well, then, by the first "on an exploratory basis," do you mean that you merely wanted this other crawler-tractor manufacturer and General Motors to understand that you would like to merge?

Mr. ARMINGTON. I didn't raise that point, sir, with the other crawler-tractor manufacturer.

Senator O'MAHONEY. Did you raise it with General Motors?

Mr. ARMINGTON. Yes, sir.

Senator O'MAHONEY. So that you didn't ask the other manufacturer that wanted to merge with you, but you did ask General Motors to take it over?

Mr. ARMINGTON. I raised the point with General Motors. With Allis-Chalmers I merely wanted to be sure that I had the benefit of their thinking and that they had the opportunity to raise the subject if they cared to do so.

Senator O'MAHONEY. Was Allis-Chalmers the first or the second manufacturer?

Mr. ARMINGTON. International Harvester approached us. I held discussions with Allis-Chalmers.

Senator O'MAHONEY. What arguments did you use with General Motors?

Mr. ARMINGTON. Sir, there was no argument at all. I simply discussed the problems of the industry with them.

Senator O'MAHONEY. Surely if there was no argument at all, there was no sense in your approaching them. You have already explained that there was a reason.

You have told us in this prepared paper that you had come to the conclusion that it was time for you to enter the crawler tractor end of the business, but that it would require \$30 million additional capital and you didn't have that amount of capital.

Mr. ARMINGTON. My talks with General Motors were purely on an exploratory basis, and I pointed out that we were facing a difficult competitive problem, that we were even considering the possibility of joining up with other organizations.

Senator O'MAHONEY. All right.

Then you said—we will skip the exploratory talks and come to the next thing.

About 6 months after my original exploratory talks with General Motors—you say—

we renewed the discussions and as a result Euclid's business was acquired by General Motors Corp.

Mr. ARMINGTON. That is right, sir.

Senator O'MAHONEY. By that, I take it, you mean that Euclid renewed it?

Mr. ARMINGTON. That is right. I again called General Motors.

Senator O'MAHONEY. What was the argument at that time? I do not mean argument in the sense of controversy, you understand, but just discussion.

Mr. ARMINGTON. Well, that particular conversation that I had with General Motors was triggered by the knowledge that the Buda Co.

had been acquired by Allis-Chalmers, and I felt that this possibility of Euclid being acquired by General Motors should be again explored, and so I raised the question.

Senator O'MAHONEY. Now, this was a selling job, was it not?

Mr. ARMINGTON. Yes, sir.

Senator O'MAHONEY. You were selling a company with \$16 million net worth to General Motors. Did you have any discussion with General Motors as to the manner in which that payment should be made?

Mr. ARMINGTON. Oh, definitely. This particular conversation that I am now mentioning, that I contacted them after this latest move in the industry of Buda being acquired by Allis-Chalmers, was again purely an exploratory situation. I asked them if there would be any interest, and again there was no answer, but at a later date, why, we were contacted, but not at that time.

Senator O'MAHONEY. Well, that is perfectly clear; and I said let us skip all the exploratory business.

Mr. ARMINGTON. O. K.

Senator O'MAHONEY. I am trying to find out how you persuaded General Motors it was to the interest of General Motors to take you in.

Mr. ARMINGTON. I think it must have been obvious to General Motors that it was a desirable move from the General Motors' point of view.

Senator O'MAHONEY. Now, the others did not think it was obvious.

Mr. ARMINGTON. Well, the others apparently did not want to go ahead.

Senator O'MAHONEY. Apparently they did not, and I am just trying to find out how you persuaded General Motors to go ahead.

Mr. ARMINGTON. I do not think——

Senator O'MAHONEY. You were offering them——

Mr. ARMINGTON. I do not think I persuaded General Motors at all. I think they saw the obvious need for this situation.

Senator O'MAHONEY. Now, look; here is your story—it is not mine—I am just trying to get an understanding of your story.

Mr. ARMINGTON. Yes, sir.

Senator O'MAHONEY. And the best I can do is to try to understand your language.

You tell us on page 10 that in the period of late 1952 the International Harvester Co. had approached you about a merger.

Mr. ARMINGTON. Yes, sir.

Senator O'MAHONEY. And then dropped it.

Then you tell us that it became clear to you that your only solution of the problem was to join a larger company, and then you say you approached Allis-Chalmers and General Motors. But you did it only on an exploratory basis.

Mr. ARMINGTON. Yes, sir.

Senator O'MAHONEY. Then the thing was dropped, and in about 6 months—using your language—about 6 months—

after my original exploratory talks with General Motors, we renewed the discussions.

I am not altogether sure whether by the word "we" you mean Euclid and General Motors or just Euclid.

Mr. ARMINGTON. I called General Motors.

Senator O'MAHONEY. Yes.

So that about 6 months after the exploratory talks were over, then you opened it up again with General Motors.

General Motors previously had not been interested. How, therefore, can you say that it was obvious to General Motors that it was a good thing? Something must have come into these discussions to persuade General Motors' management that—it is a brilliant management, it is a very able management—

Mr. ARMINGTON. Well, 6 months is a pretty short period of time.

Senator O'MAHONEY. Yes; that is what I am saying now.

Mr. ARMINGTON. It takes quite a while, though—

Senator O'MAHONEY. Yes, at the beginning of a 6-month period they wanted no part of it, and then, when you opened it up at the end of the 6-month period, they are suddenly full of enthusiasm. It just is not clear.

Mr. ARMINGTON. Well, I do not think it would be possible to expect a man that you would contact in a big organization to be able to react immediately to a big question like that.

Senator O'MAHONEY. Certainly not.

Mr. ARMINGTON. He would have to undertake very thorough investigations and considerations.

Senator O'MAHONEY. But your testimony, sir, was, in response to my question as to what persuaded General Motors to act, that it must have been obvious to them.

Now, I submit to you, as an intelligent man, that that is not a responsive answer. It had not been obvious to them 6 months before. What research had they done to convince them that they should go in or what new evidence did you present to persuade them to go in?

This was a \$30 million deal, at least. You wanted additional capital to go into other fields, and you had come to the decision that it had to be obtained from a larger company, and all the larger companies with which you discussed it, only two, to be sure, International Harvester and Allis-Chalmers, were not impressed.

But finally, General Motors was impressed. Now, all I am asking you to tell me is, how did you impress them?

Mr. ARMINGTON. Sir, I do not think that I impressed them. I think that the facts of the industry impressed them, and if you would like, I would like to take a minute or two and review some of the background on this, which would indicate it.

General Motors had developed the Allison transmission back in the middle forties.

Senator O'MAHONEY. Yes.

Mr. ARMINGTON. And Euclid had used the Allison transmission and used it very successfully. It was a very important technological contribution to the industry.

I am sure in talking with General Motors officials since, that they saw a tremendous future in that thing, and saw a chance to make an important contribution in the overall construction machinery industry, and that this was a means for them to get in and do that.

Senator O'MAHONEY. You said talking with General Motors officials since. Since what?

Mr. ARMINGTON. By that I mean since I have been working for them.

Senator O'MAHONEY. And you had no such conversations with them before the deal was made?

Mr. ARMINGTON. Our conversations at that time were purely on the basis of working out a transaction of selling the organization.

Senator O'MAHONEY. Is it not a matter of fact that on the basis of selling the organization you finally came to a determination to effect a change of stock, a transfer of stock?

Mr. ARMINGTON. Surely.

Senator O'MAHONEY. And all of the stock of this company to which you and your brother and your father had given such energy and such ability to build up since 1931 was on the table; that was to be sold.

Now, is it not a fact that in this exchange of stock you, with a net worth of \$16 million, got considerably more than that in General Motors stock for your stock, taking the value of General Motors?

Mr. ARMINGTON. No, sir. At the time of exchange, the market value of General Motors stock—we received slightly less than book value.

Senator O'MAHONEY. Well, what was the book value?

Mr. ARMINGTON. It was in the area of \$18 million.

Senator O'MAHONEY. So the company—

Mr. ARMINGTON. I do not remember exactly.

Senator O'MAHONEY (continuing). With \$16 million net worth sold out for \$18 million?

Mr. ARMINGTON. Well, sir, that was a year later. 1952 was when it was \$16 million, and the \$18 million includes reserves and things that—it includes putting back into reserves.

Senator O'MAHONEY. So you were more than \$16 million at the time?

Mr. ARMINGTON. Oh, certainly, at the time we were acquired. The figure of \$16 million was considerably previous to that; it was in 1952.

Senator O'MAHONEY. And the \$18 million was at what time; 1953?

Mr. ARMINGTON. It was at the time of acquisition, the summer of 1953.

Senator O'MAHONEY. Was it based upon the market value on a given date?

Mr. ARMINGTON. The transwer, the formula that we agreed upon, was based upon earnings, sir, relative earnings of the two organizations.

Senator O'MAHONEY. As of what date?

Mr. ARMINGTON. As of July 31.

Senator O'MAHONEY. Did you know the earnings of General Motors then?

Mr. ARMINGTON. Well, but I will have to correct that statement and say a period of time, a period of over a period of years—that I was wrong in it—of course, that would be a balance sheet figure as of July 31.

Senator O'MAHONEY. Well, let me ask you a question the answer to which you may know: What is the market value now of the stock you have got in 1953?

Mr. ARMINGTON. Oh, it is worth about 2½ times what it was at that time, as I recall it.

Senator O'MAHONEY. Well, now, in all of this transaction over this exchange, was there no discussion at all as to why General Motors should pay you in stock of such great value and such great and bright prospective future?

Mr. ARMINGTON. Certainly, it was based on their prospective earnings of the two organizations.

Senator O'MAHONEY. Well, was it not discussed?

Mr. ARMINGTON. Per share.

Senator O'MAHONEY. Was it not discussed?

Mr. ARMINGTON. Certainly it was discussed.

Senator O'MAHONEY. Tell us about it, sir; take your own time.

Mr. ARMINGTON. Well, in discussing the advantages and possibilities of the two organizations getting together, it was certainly obvious to Euclid that that was the right approach, which was to go ahead and—

Senator O'MAHONEY. Oh, yes; you wanted it; you wanted it. That goes without saying, but did you persuade General Motors that it wanted it?

Mr. ARMINGTON. I did not persuade General Motors. The facts persuaded General Motors that it was a desirable thing to do, and they had the vision to go ahead with it.

As far as arriving at a formula for exchange of shares is concerned, that was arrived at very simply with the understanding that it would be on the basis of earnings.

Senator O'MAHONEY. Did you ever get the slightest glimmering of an idea of why, in the 6 months between your first exploratory talk with General Motors and your final session, General Motors came to a realization that they ought to take up your proposition to merge?

Mr. ARMINGTON. I think it just takes that much time to prepare information and give consideration to such a big problem.

Senator O'MAHONEY. Well, I am trying to find out what the boundaries of this problem were and what the arguments were. You just cannot sit here, certainly, you know you cannot sit here, and avoid giving details and saying, "Oh, it is obvious."

Mr. ARMINGTON. I am not trying to avoid it, sir; I am trying to recall this thing the best I can.

Senator O'MAHONEY. I do not suppose that you are, but don't I make it clear what I am asking you when I say—

Mr. NITSCHKE. Senator, I wonder if it might not be—

Senator O'MAHONEY. What is your capacity?

Mr. NITSCHKE. I am attorney for General Motors.

Senator O'MAHONEY. You are the attorney for General Motors?

Mr. NITSCHKE. Yes.

Senator O'MAHONEY. You would be a pretty good witness on this matter. Were you there?

Mr. NITSCHKE. I had nothing to do with it.

Senator O'MAHONEY. Were you there?

Mr. NITSCHKE. No.

Senator O'MAHONEY. Do you wish to testify to facts?

Mr. NITSCHKE. I was going to suggest something that might help both you and Mr. Armington to get at the facts you are after. I do not think he probably knows of his own knowledge what General Motors had in mind, and I think, perhaps, we could bring in the General Motors executive that handled this, and you could ask him directly.

Senator O'MAHONEY. Do you mean to intimate, Mr. Attorney for General Motors, that your company sat down to a discussion about a

merger and did not fully explain to this gentleman who was in the discussion why they wanted to take him over?

Mr. NITSCHKE. I do not know whether they did or not, Senator; but I am sure they would know what the reason was.

Senator O'MAHONEY. Well, I do not think that your suggestion here, sir, is adding much to the illumination of the occasion at all.

Mr. NITSCHKE. Well, I just offered it as a help. I think maybe that is what Mr. Armington's problem is. You are asking him what General Motors' reasons were. I think he is probably not sure.

Senator O'MAHONEY. Do you mean to intimate that General Motors had its reasons which it held secret from him, and he was so anxious to sell and got such a good deal, that he just jumped at it without knowing what General Motors was going to do, even though they were going to take him over and make him manager?

Mr. ARMINGTON. Sir; I certainly knew.

Senator O'MAHONEY. You know we do not need to have any playing around on this. This is a plain matter of fact.

Mr. ARMINGTON. I do not want to play around.

Senator O'MAHONEY. I am sure you do not.

Mr. ARMINGTON. I want to get to the fact of this thing as much as I can, but it seems to me it is just the buildup of the overall industry, that they saw what was going on, and they saw the chance to make a contribution and they went forward on it, and to it.

Here is one thing that I would like to add to this: That I found out by hearsay while we were going ahead, and later by fact, that is, that General Motors had been undertaking a very thorough market analysis of this whole field, and that had been going on at the time when we were acquired; that had been going on close to a year.

Senator O'MAHONEY. Did they show it to you?

Mr. ARMINGTON. No, they did not. I did not know; I did not see it until long after we were a part of the corporation.

Senator O'MAHONEY. You did not see it until after the deal was closed, until long after you were part of the corporation, you say?

Mr. ARMINGTON. That is right, sir.

Senator O'MAHONEY. Then you were blindfolded when you sat down to discuss this matter with them, were you?

Mr. ARMINGTON. No, I was not blindfolded; no, we have used—

Senator O'MAHONEY. Let me review some facts to which you have testified.

You have told us that your company was engaged primarily in the production of specialized machines; did you not?

Mr. ARMINGTON. Yes, sir.

Senator O'MAHONEY. You have told us that you were producing about 50 percent of those machines; did you not?

Mr. ARMINGTON. Yes, sir.

Senator O'MAHONEY. That there were 8 competitors in the field while you were producing 50 percent; did you not?

Mr. ARMINGTON. Yes, sir; but we are mixing our points. There were more competitors than that in the entire earth-haulage industry.

Senator O'MAHONEY. Oh, yes, of course.

Mr. ARMINGTON. The eight competitors were in the dump trucks.

Senator O'MAHONEY. You are trying to mix them, and I am trying to prevent you from mixing them.

Mr. ARMINGTON. All right.

Senator O'MAHONEY. I am talking about the specialized machines. There were only eight companies producing these specialized machines; is that not right, sir?

Mr. ARMINGTON. These dump trucks.

Senator O'MAHONEY. Dump trucks, only eight companies?

Mr. ARMINGTON. Yes.

Senator O'MAHONEY. That is your testimony.

Then you went on to say that other companies which had not previously been producing these dump trucks in large volume—that is the way I understood it—began to invade your field, began to manufacture those things, and you came to the conclusion that it was time for Euclid to begin to manufacture crawler tractors. That is your testimony; is it not, sir?

Mr. ARMINGTON. Sir, I came to the conclusion that it would be highly desirable if we could, but I could not see how we possibly could do it.

Senator O'MAHONEY. That is right, because you did not have the capital.

Mr. ARMINGTON. That is right.

Senator O'MAHONEY. That is your testimony.

Then because that was the situation in the industry—this is your testimony—International Harvester approached you with a proposal to merge, but dropped it.

Then you approached International Harvester and General Motors. You were now the active agent in promoting the merger; were you not? That is your testimony; is it not?

Mr. ARMINGTON. I was active with General Motors, merely exploratory with Allis-Chalmers.

Senator O'MAHONEY. Very well; we will take it that way.

Now, then, was it not clear to you that at that time the manufacture of this specialized machinery was not likely to produce profits for you, or was it?

Mr. ARMINGTON. We were in a very vulnerable position, sir.

Senator O'MAHONEY. You found yourself in a very vulnerable position?

Mr. ARMINGTON. That is right, sir.

Senator O'MAHONEY. Didn't General Motors know how vulnerable your position was?

Mr. ARMINGTON. I think it was obvious to everybody in the industry.

Senator O'MAHONEY. Well, now, let me ask you if it was not a fact—

Mr. ARMINGTON. So they must have known.

Senator O'MAHONEY. Was it not a fact in the discussions which you had with General Motors when you were really talking business that it was recognized that the long-range market outlook for the dump-truck business, which was your principal field, was highly favorable or unfavorable, which was it?

Mr. ARMINGTON. Oh, the field was favorable.

Senator O'MAHONEY. The field was favorable.

It was recognized as that?

Mr. ARMINGTON. I would say that it would have been.

Senator O'MAHONEY. Was there no mention about it?

Mr. ARMINGTON. I do not recall the exact discussion, but certainly they thought well of our products.

Senator O'MAHONEY. Of course, I do not ask you—I do not suppose you kept any record of the discussion at all, but certainly there must have been some conversation—

Mr. ARMINGTON. Our product was definitely—

Senator O'MAHONEY. Didn't you tell them how many of those dump trucks you were selling?

Mr. ARMINGTON. Why, certainly, we gave them all the information.

Senator O'MAHONEY. Of course you did.

Mr. ARMINGTON. Of course we did.

Senator O'MAHONEY. That is right.

Did they tell you anything about what they wanted you to do when you took over as manager?

Mr. ARMINGTON. Why, certainly.

Senator O'MAHONEY. And what did they want you to do? Tell us.

Mr. ARMINGTON. It was up to the Euclid organization to build a broader line of products to occupy a more competitive, more important, position in the industry and to develop new products, using the ability of the General Motors organization, their research departments, the technological advances that they had made, and just do the best we can; that is our assignment, to get into the industry.

Senator O'MAHONEY. Get into the whole field; wasn't that what they told you to do?

Mr. ARMINGTON. Of course, you just do not do things that way. You take one product at a time and work on it.

Senator O'MAHONEY. Mr. Reporter, will you please read the answer of the witness, the answer previous to this one?

(The answer was read.)

Senator O'MAHONEY. That is what you meant. You do not want to modify that answer?

Mr. ARMINGTON. No; that is what I meant, sir.

Senator O'MAHONEY. Was it ever suggested that by so doing Euclid would provide a large captive market for the diesel motors manufactured or the diesel engines manufactured by General Motors?

Mr. ARMINGTON. The subject was not discussed.

Senator O'MAHONEY. You mean to say there was no discussion at all as to whether you would use General Motors diesels or not? Were you going to be free to buy any engine in the market?

Mr. ARMINGTON. There was no attempt made then or since then by General Motors to influence the Euclid division in the selection of engines for the products that they had made up to the time that General Motors was—that Euclid was acquired by General Motors.

Senator O'MAHONEY. I am not quite sure that I understand that statement.

Mr. ARMINGTON. Do I make it clear?

Senator O'MAHONEY. No.

Mr. ARMINGTON. Perhaps he could read it back.

Senator O'MAHONEY. Yes.

(The answer was read.)

Senator O'MAHONEY. Are you then free now, as the head of the Euclid division, to buy any engine on the market for any of your products?

Mr. ARMINGTON. I said the products up to the time that we were acquired by General Motors. I would like to——

Senator O'MAHONEY. Then by that you mean that on all new products since the acquisition you are bound to buy General Motors engines?

Mr. ARMINGTON. To answer your question, I would like to divide it into two parts: The old specialized line of products that Euclid made prior to the acquisition by General Motors, both the Cummins engine and the General Motors engine, are offered as optional equipment.

Now, the second subject that I want to get out on this is how the new lines are handled. But let us first finish with the lines of products that were made prior to acquisition.

If we thumb through this booklet quickly—this booklet was put out after we were acquired by General Motors, and had become a division of the corporation.

The small 10-ton truck, we did not offer optional engines; we offered only the GM; there was no satisfactory alternate engine available.

In the 15-ton model FD truck we offered the Cummins engine and the GM as optional equipment.

Mr. BURNS. Which one was that where there was not a satisfactory engine?

Mr. ARMINGTON. The 10-ton truck.

Now, historically for Euclid it had been our policy to provide optional engines. There were a couple of basic reasons why we did that. One is because occasionally you find that the supplier is tied up by strikes or his order board is filled up, and he cannot make delivery, and the engine could completely tie up your production; and the other reason is that we found that at various times as the years went along that the relative position of the two engine companies productwise and acceptancewise in the field were changed.

So we felt in this specialized highway haulage business that we were at this time better served to offer the two engines.

Now, carrying on through this booklet, in the TD. we offered both; we offered both the Cummins and the GM in the 22-ton truck. In the 34-ton truck, we offered both the GM and the Cummins; in the 50-ton truck, we offered Cummins alone. In the 13-yard bottom dump, both the Cummins and the GM; in the 17-cubic-yard bottom dump, both the Cummins and the GM; in the 18-cubic-yard twin-power bottom dump, both the Cummins and the GM; in the 25-cubic-yard, both Cummins and the GM; in the coal haulers, just the Cummins is listed—no, Cummins and GM in one model, and Cummins only on the other model; Cummins and GM on both of these models, coal haulers again; this scraper, Cummins and GM; this scraper, Cummins or GM; this scraper here, Cummins or GM; this loader GM or Cummins; and that covers it.

Now, that was our situation after acquisition on engine policy for the old line of equipment.

Now, on the new lines that were just then being developed——

Senator O'MAHONEY. Let me get that clear. Was this the policy after acquisition?

Mr. ARMINGTON. Yes, sir.

Senator O'MAHONEY. Is this the policy now?

Mr. ARMINGTON. Yes, sir.

Senator O'MAHONEY. On these trucks?

Mr. ARMINGTON. On those old, on those models, that we were making in a specialized field.

Senator O'MAHONEY. On the old models?

Mr. ARMINGTON. Yes.

Senator O'MAHONEY. Which amounted to about 1,500 annually, according to your testimony?

Mr. ARMINGTON. Yes; that is the figure that we were going to re-check, sir.

Senator O'MAHONEY. Yes.

Are you building new models?

Mr. ARMINGTON. Yes, sir.

Senator O'MAHONEY. Are you going to offer the same choice of engines on the new models?

Mr. ARMINGTON. No, sir; that is the second part of the problem.

Senator O'MAHONEY. Yes, sir.

Mr. ARMINGTON. On the new lines of products, as you know, we are trying to build a broad line of products in production quantities to attract first-class dealers. That is, as was said here earlier today—the statement was made that—I think you, sir, made it—do you standardize on one engine like in an automobile or do you offer special engines? So I think that puts it very well.

Now, here is our problem: If we are going to be competitive, we have to standardize on one engine, on machines that are built in production quantities on repetitive runs.

Now, the reasons for that are that the cost of producing just a single engine is less; the design becomes more complicated if you have to provide for optional engines; the scheduling problem in the factory is more difficult if you provide for optional engines; the inventory is higher, more factory space is required; it is more difficult for the dealers to stock machines and estimate their requirements if they have to guess it out between two types of engines.

I do not know of any volume manufacturer of repetitive construction machinery items that has optional engines. It is just simply not possible to be competitive in that field and offer optional engines.

Now, it is true in the old specialized field that Euclid was in you could do it, but you simply cannot do it and be competitive in the production setup.

Senator O'MAHONEY. Now, that is an easily understood explanation.

Mr. ARMINGTON. Yes, sir.

Senator O'MAHONEY. I compliment you on it.

But my original question still stands: With a slight modification, with respect to all the new models that the Euclid division will produce, is it not a fact that a captive market for General Motors engines has been provided?

Mr. ARMINGTON. Well, sir, the answer is obviously, yes, that we are planning on using Detroit diesel engines, but I would like to point out why we selected the General Motors engine.

Senator O'MAHONEY. Thank you.

All right, I will be interested in that, why you selected it.

Mr. ARMINGTON. Could I just finish this one point, sir?

Senator O'MAHONEY. Yes, please do.

Mr. ARMINGTON. In early 1953, February to be exact, I received a report—this is the old Euclid Road Machinery Co.—from an investigation on the cost per horsepower-hour of General Motors engines versus Cummins engines.

The figures that were determined at that time—and, bear in mind, this is before General Motors were in the picture—indicated that it was 15 percent less in horsepower-hour between the 190-horsepower GM 671, and the Cummins 200-horsepower engine.

Of course, it is naturally obvious what engine you would use, especially in view of the fact that it is a more economical engine.

Senator O'MAHONEY. Is that your answer, sir?

Mr. ARMINGTON. Yes, sir.

Senator O'MAHONEY. The committee will stand in recess until 2:30. Thank you very much, sir.

You will resume your statement; you have not finished it.

(Whereupon, at 1:35 p. m., the subcommittee recessed, to reconvene at 2:30 p. m. of the same day.)

AFTERNOON SESSION

Senator O'MAHONEY. Are you ready to proceed, Mr. Burns?

Mr. BURNS. Yes, sir. You mentioned a list of old models which were being made at the time of the acquisition, and indicated whether they were sold with a choice of engines or a particular engine. Then you listed new models, indicating that you are standardizing on one engine.

Now, when you say "new models," do you mean entirely new products not previously made at all, or new models of previous products?

STATEMENT OF RAYMOND G. ARMINGTON, ACCOMPANIED BY ROBERT A. NITSCHKE—Resumed

Mr. ARMINGTON. New models for the Euclid organization.

Mr. BURNS. I don't think that answers the question. You were making certain products. You were making dump trucks, you were making loaders, you were making scrapers, and you were making some of these aircraft tractors at the time of the acquisition.

Now, when you talk about new models which are being standardized so as to use only the GM engine, are you talking about new models of those products?

Mr. ARMINGTON. The crawler tractors represented a complete new field for the Euclid division.

It is true that we made scrapers of the semitrailer type before acquisition. The scrapers that we developed after acquisition were of a new type of scraper, of an overhung engine type, which was not built by the old Euclid organization.

Does that answer your question, sir?

Mr. BURNS. Partially.

(Short recess.)

Senator O'MAHONEY. All right; will you continue?

Mr. BURNS. Are any of the dump-truck loaders, coal haulers, or scrapers which you made prior to the acquisition now designed so that the specifications call for a GM engine?

Mr. ARMINGTON. In every model of the old line equipment we continue to offer an optional model.

Mr. BURNS. I am not sure I understand that. Do you make any trucks of any kind now which have specifications that fit only the GM engine?

Mr. ARMINGTON. The 15-ton truck we offer in Cummins and GM. The 22-ton truck we offer in Cummins and GM, and so forth, down through the line.

Mr. BURNS. So there are no trucks that you make now which are so designed that they call specifically for the GM engine?

Mr. ARMINGTON. I completely overlooked the 10-ton unit, which has always been General Motors powered.

Mr. BURNS. Yes; you had mentioned that previously, but when you are talking about these new models you are not talking about products which you have made prior to the acquisition in which Cummins engines had been offered as a choice?

Mr. ARMINGTON. That's right; Cummins power is offered optionally in each size of vehicles that we were building before.

Mr. BURNS. What are the new products in which you have found it desirable to standardize on the one engine, and that is, the GM engine?

Mr. ARMINGTON. The new products that we have developed since acquisition are volume production units, and in order to be competitive, we have to use one engine.

As I mentioned before, there are a number of reasons, cost, inventorywise, schedulingwise, where you simply cannot offer two engines and still be competitive. No manufacturer that I know of in the volume field offers two engines.

Mr. BURNS. What types of products are these that are in the volume production?

Mr. ARMINGTON. The scraper, the overhung engine scraper, that is the two-wheel tractor that I mentioned, and the crawler tractor line.

Senator O'MAHONEY. Do you have any new models of off-highway trucks?

Mr. ARMINGTON. We have improvement of various models coming on from time to time, but we are staying in the same general classification, same general size classification. We are always improving, sir.

Senator O'MAHONEY. Do they also have the same engine choice as the old models?

Mr. ARMINGTON. Yes.

As I said before, all of the size categories are offering two engines. There just simply has been no radical change in that grouping.

Senator O'MAHONEY. So you are trying to make it clear that on these dump trucks, which constitute the bulk of your business in the beginning, even though you make some changes in these models, you are still offering the same choice of engines that you have offered before; is that right?

Mr. ARMINGTON. The customer can make the selection, yes.

Mr. BURNS. In that type of equipment the Senator is referring to, the Cummins engine may be installed without any changes in the equipment or any modification?

Mr. ARMINGTON. Well, the point is, you have to design your product from the ground up, really, to take the particular engine. You just simply can't pull one engine out and put another one in; it isn't that easy.

All your accessory situations are different, your shrouding, your radiator, your whole design for that.

Mr. BURNS. You are talking about your trucks now?

Mr. ARMINGTON. Yes, I am talking about the trucks where we are using the optional engine.

Mr. BURNS. Prior to the acquisition, did you have to design different types of trucks, one for Cummins and one for GM?

Mr. ARMINGTON. Why, certainly, certainly. One 15-ton truck will be designed to take the Cummins engine, another 15-ton truck will be designed to take the Detroit diesel engine. I think that sums up why it is that you just simply can't offer optional engines and get your costs down, if you are in a volume production field.

Mr. BURNS. Maybe I misunderstood Mr. Boll, but I would like to try to get it clear. I understood from Mr. Boll that a customer would select the piece of equipment, then tell what engine he wanted installed in it; isn't that the practice in the industry?

Mr. ARMINGTON. Excuse me just a moment. I will get another piece of literature that might clarify it. I think I will have a piece of literature which will clarify this thing better than I can explain it.

These were put out, I guess, 3 or 4 years ago. This booklet shows how these different models are designed specifically for this Cummins power engine, and you have in this other booklet a whole series of machines which had the same basic products of the old Euclid Motor Co. with General Motors power. But we are at the point that you just simply can't take an order from a customer and then pull an engine off the shelf and stick it in the chassis that is sitting in the yard, and ship it to him. You have got to plan and schedule ahead of time, and you have got to design ahead of time, plan and schedule ahead of time, and work it through on that basis. It actually is a different model, although it is the same size truck.

Mr. BURNS. Here is this book you have which says, for example, take model FFD, a 34-ton rear dump. It gives all the specifications as to weights, et cetera, and it provides a choice of 2 engines, 2 GM 190-horsepower, or 2 Cummins 200-horsepower.

Do you mean that although that had a single model number, that it had to be designed differently, depending upon which engine the customer selected?

Mr. ARMINGTON. It has different model numbers. The basic FFD is common, but 1 FFD is General Motors-powered, and the 4 FFD is Cummins-powered. And those trucks are different. They have the same body, but there are a good many different things in them.

Mr. BURNS. For many years you supplied your equipment, especially the equipment which is referred to, as offering a choice of engine, to your customers, and gave them the choice of either type of engine; didn't you?

Mr. ARMINGTON. Yes.

Mr. BURNS. Weren't those products made in volume production, those dump trucks?

Mr. ARMINGTON. Not in the volume that you have in the scraper field and in the crawler-tractor field. As we mentioned before, 1,500 against—what was it—50,000, or whatever it was, is the ratio.

Mr. BURNS. But that 50,000 is the entire industry?

Mr. ARMINGTON. 1,500 is for the entire rear dump industry, too, for the year 1953. As a matter of fact, as reported by the Department of Commerce, it was 1,487 for the year 1953 for rear dumps. That's where that figure came from.

Mr. BURNS. Don't you call it volume production the way you make your dump trucks?

Mr. ARMINGTON. I would call it small volume production, but not volume production like the crawler-tractor industry at all.

Mr. BURNS. So that you say you still are offering the choice to your customers of Cummins and GM engines in all the products in which you offered them before the acquisition?

Mr. ARMINGTON. Yes.

You have changes as you go along, but the actual fields of 15-ton, 22-ton, and so forth, are the same.

Mr. BURNS. You have supplied us with figures showing a comparison of the engine purchases by Euclid for the years 1947 to 1955, inclusive?

Mr. ARMINGTON. Yes, sir.

Mr. BURNS. May we have these included in the record?

(The document referred to is as follows:)

Comparison—Engine purchases by Euclid

Year	Cummins Engine Co., total purchases	Detroit diesel division, total purchases	Year	Cummins Engine Co., total purchases	Detroit diesel division, total purchases
1947.....	\$2,012,851.08	1 \$1,772,588.88	1953.....	\$4,805,874.00	1 \$1,076,804.00
1948.....	1,877,939.87	1 1,658,198.66	1954.....	2,251,526.00	2,159,666.00
1949.....	902,662.64	1 1,233,429.63	1955 (9 months ending Sept. 30, 1955)	1,087,800.00	4,598,618.00
1950.....	3,097,048.01	1 1,049,151.66			
1951.....	3,855,561.00	1 2,356,347.00			
1952.....	4,551,567.00	1 1,689,779.00			

¹ From 1957 through 1952 GM produced only 1 engine, the 6.71 190 horsepower. In 1953 GM added the 6-110 300-horsepower engine. Cummins from 1945 on furnished engines rated at approximately 150 horsepower, 200 horsepower, and 275-300 horsepower.

Mr. BURNS. According to this schedule, Euclid used more Cummins engines than it did diesel engines until 1955, GM diesel engines.

Mr. ARMINGTON. In the year 1949 and in the year 1955, we used more Detroit Diesel engines than Cummins engines.

Mr. BURNS. Now, what were the reasons that your orders for Cummins engines were reduced in 1955?

Mr. ARMINGTON. Basically, it is customer choice, and there is also another very important reason that has entered the picture.

Detroit diesel only built the 671, that is, the 190-horsepower engine, up through 1952. That was all we had in our line up at that time.

We had been experimenting with Detroit Diesel's 300-horsepower engines for several years and added them to our line early in 1953.

Now, part of the reason for this difference in volume is the fact that there has been a sharp trend upwards in the volume of the 22-ton

machines and the trend downward in the 15-ton machines and, of course, the 22-ton machine was exclusively Cummins—well, I shouldn't say exclusively—it was Cummins- and Buda-powered up to 1953, although the Buda was a very small contender, but after 1953 the options were Detroit diesel and Cummins.

Mr. BURNS. Is it your statement that in all the years prior to the acquisition in 1953, your customers preferred Cummins engines, and then after the acquisition they began to prefer General Motors engines?

Mr. ARMINGTON. That wasn't my statement at all.

Mr. BURNS. You said that it was customer preference that accounted for the change. I wanted to make sure I understood.

Mr. ARMINGTON. My statement was that the 300-horsepower Detroit diesel engine was not available to us in volume quantity until 1953.

Mr. BURNS. Is this the sole reason why your sales, purchases, from Cummins, dropped 75 percent, and purchases of GM engines rose 75 percent?

Mr. ARMINGTON. No, sir. I said that was one important factor; and another important factor is customer choice.

Mr. BURNS. How important was the customer choice factor in this change or reduction of 75 percent in the engines that they wanted from Cummins and an increase of at least 75 percent in engines that they wanted from General Motors?

Mr. ARMINGTON. I do not think I can evaluate it accurately. The customer had his free choice to choose which of the powerplants he wanted in his hauling equipment.

Mr. BURNS. My figures were incorrect as to the increase. The increase, of course, was 300 percent in the use of GM over the use of Cummins, and the increase of 1955, of GM engines in 1953 was also about 300 percent.

Now, was there any change in the method of selling this equipment after the acquisition which may have accounted for this customer selection of GM engines?

Mr. ARMINGTON. I think there is.

Mr. BURNS. Will you tell us what the changes were?

Mr. ARMINGTON. The Euclid dealers during 1953, many of them, were put in a position where they could service Detroit Diesels—could sell Detroit Diesel parts.

I would think that having in mind parts volume that that might well affect a dealer's feeling, and he might very well use sales efforts on the customer.

Mr. BURNS. Were these dealers that you are talking about dealers who sold Euclid products? Did they sell any other products besides Euclid products?

Mr. ARMINGTON. Many of our dealers are multiple-line dealers and sell other products.

Mr. BURNS. Were they not in a position to have diesel, Detroit Diesel, parts before the acquisition?

Mr. ARMINGTON. No, they were not in a position to do so.

Mr. BURNS. Why were they not?

Mr. ARMINGTON. Because we had never developed our dealer organization to a point that it was practical to have them service the parts in our engine. We depended upon the Cummins engine dealer organization and the Detroit Diesel dealer organization to do that service.

Mr. BURNS. Was there any reason why these dealers could not just as well handle Cummins parts while they were handling Detroit Diesel parts?

Mr. ARMINGTON. It never was practical. I was——

Mr. BURNS. You mean it was not practical from the standpoint of GM or it was not practical from the standpoint of——

Mr. ARMINGTON. It was not practical from the point of view of the dealer.

The arrangement with Cummins had just simply been that it did not offer enough margin to the dealer to make it worth while for him to handle Cummins diesel parts.

Mr. BURNS. Is this another factor which is going to make it more difficult for Cummins to obtain business, the inability to have its parts in the hands of the dealers who sell the Euclid equipment?

Mr. ARMINGTON. That is Cummins' policy, and they will have to answer that themselves. Over the years it has always been a problem with us, it has been one of the problems in our merchandising organization. We could not have a strong enough one to get bumper-to-bumper service.

The Caterpillar organization could go out and sell against us, the dealer pointing out he could take care of the whole machine from bumper to the rear bumper, engine parts, and anything else. We were not in a position to do so.

We had to depend upon the two respective Detroit Diesel and Cummins dealer organizations.

Mr. BURNS. That had not been a handicap in your sales up until 1953, according to the statistics you have shown us.

Mr. ARMINGTON. That is because of our product leadership in the field as compared to the other fellow's. It would show up in the future. I am very certain, when the competitor has products that are as good as ours.

Mr. BURNS. So you were basing that on a prediction of the future rather than actual past experience?

Mr. ARMINGTON. Well, it is definitely essential that you should have bumper-to-bumper service, and let your dealer handle it if he is really going to be a first-class dealer and get out and do a real job.

Mr. BURNS. Was there any practice after the acquisition of equipping the products with GM engines so that they would be ready for the customer when he came in to select a piece of equipment?

Mr. ARMINGTON. Our basic interest was selling trucks, and we stocked whatever machines it was a reasonable volume on them, and regardless of whether it was Cummins or Detroit Diesel power did not make any difference; it was a question of estimating the volume requirements and stocking for it.

Some machines we did not stock at all, of the larger sizes, either with Detroit Diesel or Cummins; they were just too specialized.

Getting back to this parts, bumper-to-bumper service thing, Detroit Diesel does offer—rather the LeTourneau organization does sell Detroit Diesel parts, the LeTourneau dealer organization sells Detroit Diesel parts. Actually they were doing that before Euclid was.

Mr. BURNS. But even though they gave their dealers the advantage of having Detroit Diesel parts, you were still ahead of them in sales.

Mr. ARMINGTON. In the rear dump haulage field, yes; because of the type of haulage that we were making.

Mr. BURNS. Yes. We are just trying to evaluate——

Mr. ARMINGTON. It is just a matter of product.

Mr. BURNS. We are trying to evaluate how important it was to get these GM parts into the hands of dealers in order to help the dealers sell Euclid equipment, in view of the fact that the record shows that they successfully had been able to sell your products when they did not have them, and the difference being that this would seem to be a handicap on the ability of Cummins to dispose of its engines if it is an advantage to the dealer to have GM parts.

Mr. ARMINGTON. Our competitive problem is Caterpillar and not Cummins.

Mr. BURNS. But Cummins is one of the companies in the business that has to be considered.

Now, were there any other changes in connection with your arrangements with the dealers after you were acquired by GM?

Mr. ARMINGTON. Well, some dealers found themselves in a position where lines would badly conflict.

Mr. BURNS. In what way?

Mr. ARMINGTON. In the long run they would make a selection between—International Harvester being the main source of the conflict.

We had a number of dealers who handled both International Harvester crawler tractors and our own—their own rubber-tired products.

International had been experimenting with rubber tires for years and obviously, as they would progress with that, it would be apparent to the dealer that there would be a conflict and, of course, now that we are developing a crawler tractor, the conflict comes from that side, too.

Mr. BURNS. Does that mean that those dealers gave up International Harvester or they gave up Euclid?

Mr. ARMINGTON. Well, the dealers make their own choice.

Mr. BURNS. I mean, what has happened?

Mr. ARMINGTON. Some have done nothing, some are continuing to handle both lines, some have chosen one way and some have chosen the other.

Mr. BURNS. Then, to some of the dealers they do not find it a serious conflict?

Mr. ARMINGTON. Some of them have not made a decision as yet.

Mr. BURNS. Under what terms was it the custom to sell your equipment to dealers prior to this merger?

Mr. ARMINGTON. What do you mean, sir?

Mr. BURNS. Did you sell them for cash or did you sell them on any kind of credit?

Mr. ARMINGTON. The largest part of our sales were by cash. I wonder, sir, should I finish—we are getting off——

Senator O'MAHONEY. He has not finished his statement.

Mr. BURNS. What he is going to discuss is, I believe—let us see what it is—let me finish this question of dealers and then he may continue.

You do not mention that in your prepared statement; do you?

Mr. ARMINGTON. No, sir.

Mr. BURNS. Let us finish it.

Mr. ARMINGTON. I do not believe so.

Mr. BURNS. Let us finish it, and then you can go into the dealers. You sold, you say, for cash prior to the acquisition?

Mr. ARMINGTON. We sold both on terms and for cash. The bulk of the business was on a cash basis.

Mr. BURNS. Were there any discounts involved in that?

Mr. ARMINGTON. We always offered a cash discount. Again, it gets back to the lack of financing in the early days; the precedent of a cash discount was established and carried on.

Mr. BURNS. The bulk of your sales were through dealers for cash?

Mr. ARMINGTON. Yes, sir.

Mr. BURNS. Was there a change in that after the acquisition?

Mr. ARMINGTON. Yes.

Mr. BURNS. What was the change?

Mr. ARMINGTON. We followed the General Motors policy of eliminating the cash discount, selling on a net basis.

Mr. BURNS. Well, how did that affect the prices of the products that you sold to the dealers?

Mr. ARMINGTON. They were adjusted so that the amount that the dealer paid for his model would be the same.

Mr. BURNS. How long after the acquisition did that adjustment take place?

Mr. ARMINGTON. I think about a year.

Mr. BURNS. Did the change of giving up this cash discount take place immediately or was that a year later?

Mr. ARMINGTON. A year later.

Mr. BURNS. I see.

So that for about a year you continued with the same practice you had?

Mr. ARMINGTON. Yes.

Mr. BURNS. And then you adjusted the prices.

That meant that you reduced the price list down, the equivalent of about 5 percent?

Mr. ARMINGTON. We reset the prices so that the amount of dollars the dealer paid for his product was the same as they were before.

Mr. BURNS. Well, after that adjustment was there any change in price?

Mr. ARMINGTON. There have been price adjustments since that time, yes; the same as the industry generally.

In that connection, I would like to point out there has been no price revision in the Euclid line from, I believe, about 1950 up until early in 1955.

Mr. BURNS. Well, has this change in cash-discount policy caused any of the dealers to purchase on credit?

Mr. ARMINGTON. Euclid does not offer credit as such. The YMAC credit plan is available to them if they choose to use it. It is another service that Euclid is now able to offer to the dealers.

Mr. BURNS. And YMAC, is that Yellow Manufacturing Acceptance Corp.?

Mr. ARMINGTON. Yes, sir.

Mr. BURNS. Is that a division of General Motors?

Mr. ARMINGTON. Yes; either that or a subsidiary.

Mr. BURNS. Just what kind of service does YMAC offer to your dealers?

Mr. ARMINGTON. A financing service, both customer financing service and a floor plan financing service.

I neglected to say that the old Euclid Road Machinery Co. also offered a floor plan for the dealers.

Mr. BURNS. Will you tell us what that is?

Mr. ARMINGTON. I do not remember exactly, but it was a means for permitting the dealer to have the product for several months without making complete payment. I do not remember the details.

Mr. BURNS. But after the several months, if he kept it he paid for it?

Mr. ARMINGTON. That is right.

Mr. BURNS. Is that handled differently at the present time?

Mr. ARMINGTON. Yes, in its basic elements it accomplishes the same things.

Mr. BURNS. Well, since most of your business with these dealers had previously been for cash, just how does the service of YMAC enter into it?

Mr. ARMINGTON. Well, a customer either finances it himself and pays us or YMAC finances it for him or—I am talking about the dealer now.

Mr. BURNS. Yes.

Mr. ARMINGTON. Perhaps the customer buys for cash and perhaps the dealer reimburses the division.

Mr. BURNS. Are those arrangements offered as a part of the terms of purchase by the dealer from the Euclid division?

Mr. ARMINGTON. Yes. YMAC, the YMAC privilege, is available to any dealer handling Euclid products.

Mr. BURNS. Do you know how your dealers previously financed their purchases before you became part of General Motors?

Mr. ARMINGTON. I think they financed it somewhat with local banks and somewhat with national credit companies. But I think a large number of them still do that. Some of them use the YMAC service.

Mr. BURNS. Do they also use the YMCC service?

Mr. ARMINGTON. I am sorry, sir, I do not know what that is.

Mr. BURNS. I believe it is the Yellow Manufacturing Credit Corp.

Mr. ARMINGTON. I am not familiar with that.

Mr. BURNS. Is there any insurance involved in any of this financing?

Mr. ARMINGTON. I am unable to answer that. I do not know just how those technical affairs are handled. It would seem logical that there might be, but I do not know.

Mr. BURNS. You mean there is no connection between the transaction by which the Euclid division sells the products to the dealer and the arrangement for financing?

Mr. ARMINGTON. YMAC worked that out with the dealers. It is a service they offer the dealers, the same as the local bank or a credit company.

Shall I continue, sir?

Mr. BURNS. I have one more question.

Senator O'MAHONEY. Let us see if Mr. Burns has anything else.

Mr. BURNS. Do you know how much of the Euclid division's sales since the acquisition have been financed through YMAC?

Mr. ARMINGTON. I think we presented a statement on that; if I can see it, I will read it to you—25 percent.

Mr. BURNS. Can you tell us whether this financing arrangement was a factor in the increase of total sales which your company had from about \$33 million in 1952 to an average of \$54 million in 1953 and 1954?

Mr. ARMINGTON. My opinion is that it was not an important factor.

Mr. BURNS. You may continue with your statement.

Mr. ARMINGTON. About 6 months after my original exploratory talks with General Motors, we renewed the discussions and, as a result, Euclid's business was acquired by General Motors Corp. I learned at that time that that General Motors itself was engaging in research and development work in the off-the-road equipment field at its GM truck and coach division at Pontiac.

I had heard rumors of that ahead of that time, but I received factual information on it after the acquisition.

The staff working at the truck division on this construction-machinery project was transferred to Euclid.

Now this staff consisted of 11 men that were transferred to Cleveland. Their work, I found out later, had been largely of a preliminary nature, exploratory, but actually some basic design development, but not detailed design development.

This group was enlarged in Cleveland under Euclid's supervision. One of the first steps taken to broaden Euclid's line of products was the manufacture of a large crawler tractor that was designed by this staff. Here is a model of that crawler tractor.

A need for improvement in the heavy crawler line had seemed obvious to Euclid management for years. Contractors, as a field expedient, often had to join together or "Siamese" two conventional tractors to get sufficient power. Highway construction required increased size and capacity of earth-moving equipment. In 10 years, Euclid rear-dump trucks had increased from 10 to 50 tons. Bottom-dumps were three times larger than the original machine, and horsepower had doubled. Power loading shovel sizes on road building formerly used a 1½-cubic-yard shovel. Now, 2½- to 5-cubic-yard shovels are used on excavations on turnpikes and highways. Yet crawler tractors during this period had increased in power only slightly by comparison. It took 20 years, from 1930 to 1953, for crawler tractors to double in power. In 1953, the largest crawler tractor marketed was 175 horsepower. The General Motors-Euclid organization was almost immediately able to double crawler tractor horsepower with its 390-horsepower TC-12 and create earth-moving ability of an even greater increase.

The first tractor engineered by General Motors is designated as the TC-12. It is powered by two 190-horsepower engines for a total of 380 horsepower. Each half is individually connected through a full torque converter transmission to individual tracks. This provides the operator extreme maneuverability, in that 1 track can be run forward and 1 rearward enabling the tractor to turn in its own length.

In other words, it turns on this axis down through here whereas the conventional tractor turns on an axis through its tracks.

The two halves of the tractor are connected with a central pivot shaft which allows one-half to move up and the other down, independent of the other, thus insuring full contact of both tracks on the ground at all times thereby substantially increasing tractive effort.

Again if you take a look at the model, it gets that type of action there.

This tractor is now in use on several construction projects and mines around the country. On the Indiana turnpike this tractor, used in connection with a TS-18 scraper, also designed by General Motors since its acquisition of Euclid, has enabled the contractor to double the amount of dirt hauled per hour and cut his cost by one-half as compared to any equipment previously available to him from any other manufacturer. When it is considered that one of the greatest public needs today is a tremendous road-building program, estimated at present to require \$100 billion over the next 10 years, the technological contribution which General Motors has already made in reducing the cost to the Nation of this tremendous construction program is obvious.

Actually 24 percent of our products shipped in the 9 months of 1955 are new products that are developed by the Euclid-GM team.

Senator O'MAHONEY. What percentage?

Mr. ARMINGTON. Twenty-four percent, sir. These are purchased by the user solely because of their increased productive benefits.

Now again I want to point out that the TC-12 crawler, the S-7, S-12, S-18, the S-18 scrapers, there was not a line on paper when the Euclid organization became a part of General Motors. Large projects, like producing a crawler tractor, often take 5 to 10 years. This thing is in production in very small quantities, pilot-run basis, in the short time now from September 1953.

That was possible due to the know-how and ability of the General Motors organization and the hard work of the boys at Euclid.

Manufacture of this large Euclid crawler tractor is just beginning in production quantities and it can be presumed that it has stimulated all three major crawler-tractor manufacturers to produce heavier, more powerful tractors. Certainly the stimulation of this field is going to result in lower costs of dirt moving.

It seems to me that only through combined efforts of a large manufacturing concern could such machinery be developed. By itself, Euclid could have made no such contribution. As a matter of fact, from my standpoint as one of the principal owners of a small business, I would have felt that the most Euclid could have hoped for by itself, in view of the nature of the industry and the advances in technological progress, would have been to have survived in a constantly decreasing way on a limited basis with the few products in which Euclid had pioneered and in which it had established a reputation.

During this period I would like to read some figures. In 1945 with our 10 million sales, the profit after taxes was 2.8 percent. In 1946 with 17½ million sales, the profit after taxes was 8.2 percent. In 1947, with \$32,800,000 of sales, the profit was 10.7 percent. In 1948, with \$31,200,000 sales, the profit was 9 percent. In 1949, the volume dropped off to \$22,700,000 with a profit of 5.8 percent.

Then in 1950 with \$31,400,000, it was 5.7 percent, and in 1951 the sales volume was \$53 million, with 3.9 percent profit after taxes. In 1952, with \$33,700,000, it was 4 percent profit after taxes.

Senator O'MAHONEY. Do you think that was an unusual position?

Mr. ARMINGTON. To my mind this clearly indicates the problem that Euclid was finding itself getting into, the increasingly competitive situation.

Senator O'MAHONEY. You found for Euclid as a small business that it was getting increasingly difficult to compete?

Mr. ARMINGTON. Yes, sir.

Senator O'MAHONEY. Would you think that that was the same situation for other small businesses in this field? In other words, was it your feeling that competition in this industry was getting more and more difficult?

Mr. ARMINGTON. I think it was. I think it was much more difficult.

Senator O'MAHONEY. Generally speaking.

Mr. ARMINGTON. I think it was much more difficult, and the need for a complete line of products to support an aggressive dealer organization is becoming more and more evident all the time.

Senator O'MAHONEY. What do you do to maintain a loyal aggressive dealership organization?

Mr. ARMINGTON. Give them a line of products they can make a profit on.

Senator O'MAHONEY. What sort of a contract do you give them?

Mr. ARMINGTON. It is pretty much a conventional contract in the industry. I am not too familiar in detail with it. I think it is a 1-year-tenure contract.

Senator O'MAHONEY. Cancelable by the manufacturer without recourse?

Mr. ARMINGTON. I am not in a position to comment. I don't have that information here. It is conventional in the industry.

Senator O'MAHONEY. Isn't the dealer system the basis upon which you carry on your sales?

Mr. ARMINGTON. It is.

Senator O'MAHONEY. Now you know that the dealers complain that they put up the money for their plants, they invest their capital, they have a 1-year agreement, it scarcely can be called a contract because it can be terminated without reason by the manufacturer. Now that is the conventional contract so far as General Motors and Ford go.

It is not the contract as far as Chrysler goes with automobile dealers, so I am trying to find out, and I assume from your answer, that your dealer contract is conventional like the automobile contract of General Motors.

Mr. ARMINGTON. I am not familiar with the automobile contract.

Senator O'MAHONEY. Well, you are the head of the Euclid Division, are you not? You are familiar with your own.

Mr. ARMINGTON. I am familiar with our own relations with our dealers, and they are excellent.

Senator O'MAHONEY. And you said it was a conventional one.

Mr. ARMINGTON. And we have very little turnover in our dealer organization. The working relationship is working out very well.

Senator O'MAHONEY. Of course, that is not the question. You said in the first place that it was a conventional arrangement, and then when I tried to get some of the details about it, you said, "Well, I don't know anything about it."

Well, how do you know it was conventional if you don't know anything about it? Now, isn't it a matter of fact that the contract you have with your dealers is practically the same as the contract that General Motors has with its automobile dealers?

Mr. ARMINGTON. Frankly, I can't answer that. I don't know. I think it is probably more nearly like competitive construction machinery company producers.

Senator O'MAHONEY. Will you get us a copy of your contract?

Mr. ARMINGTON. We will be very glad to submit that.

Senator O'MAHONEY. Please do.

Mr. ARMINGTON. That would probably answer the question much better.

Senator O'MAHONEY. Yes. We will expect to receive from you now, a copy of your dealer contract.

Mr. ARMINGTON. Yes, sir; we will provide it, and I do want to repeat though that to my mind, as the general manager in operations, that the working relationship with the dealer is the important thing, and we have enjoyed excellent working relationships with our dealers.

Senator O'MAHONEY. Well, I would think it would be the basis of good relationship.

Mr. BURNS. May I ask a question about these profit figures? You gave a percentage of profit. What is that a percentage of?

Mr. ARMINGTON. Sales.

Mr. BURNS. Percentage of sales. Was it out of those percentages of sales that you increased your net worth by \$13 million over a 6-year period?

Mr. ARMINGTON. Largely reinvested earnings.

Mr. BURNS. All right. Go ahead.

Mr. ARMINGTON. How long Euclid could have survived on the old basis, I do not know. Certainly it could not have hoped to continue to make real advances in this fast-growing industry.

And again I want to repeat that I have very vivid recollections of worrying about the problem of competitors being able to put so many more salesmen in the field and have much more aggressive engineering problems than we had. The fact that we had such a narrow line of products was a most precarious position to be in.

In contrast, associated with General Motors, my plant and its personnel—now working with the aid of General Motors research and engineering—is in the position to employ its initiative to the fullest and to endeavor to contribute importantly to the advancement of the industry. In this regard, we are particularly fortunate, we believe, in being associated with a company like General Motors, with its know-how in the application of diesel power and power transmission and its techniques in mass production of heavy equipment.

But perhaps even more important is what I consider the General Motors attitude. I have already mentioned our preliminary start in the crawler tractor industry, but this is just a beginning. Development of rubber-tired equipment is being continued; an engineering program on scrapers has been expanded. The primary effort from the General Motors point of view is to aid us in building the type of equipment which will meet the tremendously growing needs of the highway and construction industry in the near future. Its approach has not been to use its dollars merely to expand production of products already available from others but to develop new and improved lines of products in an industry which needs them and in an industry which is of growing importance to the well-being of all of us.

Now, for example, General Motors pioneered the Allison transmission. The old Euclid Co. started using it experimentally in 1946. The

twin power scraper that we are now building is a mighty good example of that.

We had had the problem for years of trying to find a way to power the rear wheels on a semitrailer earth-moving vehicle. We actually made machines with a remote powerplant back there, hydraulic drive transmitting, generating the high-pressure oil in front of the tractor and transmitting it back to the rear for power.

We spent a lot of money on it, and it just simply didn't work out. As soon as we heard about this remote control transmission of General Motors, it just opened that entire door to us, and we got started immediately with them on that development. This led to twin power trucks and scrapers and a whole new group of earth movers. It really came into commercial importance in 1950, and by 1954 it is getting to be a pretty wide buyer's choice.

At one time or another during the 2 years since our acquisition by General Motors, we had in the field over 20 experimental models at various construction job sites in the United States.

Actually, Euclid's engineering budget since acquisition has been almost 10 times what it was prior to acquisition.

How many of these products that we are working on will prove commercially useful, we do not know. But this is the direction of the effort. The importance of progress in this field in terms of the benefit to the public, I think, must be recognized since one-third of the contractor's dollar is spent on earthmoving.

Since operating as general manager of a division of General Motors, I have grown familiar with the General Motors management viewpoint. They are always looking for opportunities for a technological contribution. An example of that is what was done in the case of Electro-Motive.

I am sure, from talking with General Motors officials, that they felt a great contribution could be made in the construction-machinery field. From my point of view, it has been a very wonderful thing, because for many years we have gotten a great deal of satisfaction out of developing and growing, and now we are in a position where we can keep on doing it.

Naturally, it would be fine if small family companies like Euclid could continue to stay small and independent and at the same time do the big things required in their industry. The fact remains that Euclid had just grown into a market and an industry which required the finances, resources, and facilities of a larger organization.

I know this committee cannot be concerned with my own personal problem of how to make my small company successful, something I could not have hoped to do without the association with some large organization such as General Motors.

Senator O'MAHONEY. In the vernacular, commonly used; if you can't beat 'em, join 'em. Proceed, Mr. Armington.

Mr. ARMINGTON. But I am sure the committee cannot be unconcerned with the advantages to the public which are stemming and will stem from such an association.

My small organization, with its broadened horizons, has been greatly stimulated, not only by its association with General Motors, but because of its increased potential for the development of new and improved equipment in this most important field of construction machinery. I have reason to believe that our efforts will and have already

acted as a stimulus to the other members of the industry, all of which taken together, I think, in view of the tremendous construction projects we face, is of vital importance and value to our country and to the world at large.

Now, in summation I would just like to add a couple of comments here.

My family were the originators of fast off-the-highway haulers. We have had fast progress, and the development has been exciting. It's been a great experience, but we found in the early fifties that we were beginning to die on the vine, as indicated by this diminishing-profit situation.

We always have to think years ahead, and I knew absolutely that the thing was getting more difficult, and I didn't see a good potential solution to the problem, unless in some way our product could be made supplemental to a crawler-tractor model. It certainly has been a source of great satisfaction to see this old original family aim of wanting to build a self-powered prime mover, that is, firstly, a crawler tractor, and then a wheel tractor, and finally, a rubber-tired hauling unit, to see it preserved and carried on in great shape.

Thank you very much, sir.

Senator O'MAHONEY. Well, I thank you, sir. I think you have added a great deal today to the understanding of this question.

For example, I think your recent statement about your own experience, watching your profits, your profits on your sales, not on your capital, declining, made you feel that your family company was dying on the vine.

Now, the unfortunate fact is that throughout the country family corporations, family firms, family companies are dying on the vine in industry, and mergers are increasing.

They have been increasing manyfold during the past 2 years, and by each merger the amount of owner control decreases over the industry. When yours was a family corporation, your father, your brother, and yourself managed that corporation. Now that you are only a division in General Motors, the stock of which is counted in the millions of shares and held by hundreds of thousands of people, it is managed by a handful of the shareholders, who do nothing—I mean the great majority of the stockholders do nothing but send in their proxies, signed as an expression of confidence in the management. But they exercise no control whatsoever about the policy.

Now, you, having been in a family company where you did exercise all the control of the policy, I would like to know what your experience is with respect to the formulation of policy in this new expansion. Who does it? What is your part?

Mr. ARMINGTON. The actual operation of the Euclid Division is left pretty largely to me.

Senator O'MAHONEY. Pretty largely?

Mr. ARMINGTON. Pretty largely.

Senator O'MAHONEY. What is the function of the board of directors? What is the function of the executive committee of the board of directors?

Mr. ARMINGTON. I would like to answer this in a little bit different way, if I may.

Before acquisition by General Motors, I was responsible to a board of directors. Our engineering section would work out plans for new

products, we would consider them, make projections on them, always submit our major decisions to the board for approval. We would have the counsel and guidance of our board.

Now, I have a similar situation with Detroit that we are responsible for doing a job; they are available for counsel and guidance very much the same as our old board of directors was.

Senator O'MAHONEY. Well, who do you mean by "they"?

Mr. ARMINGTON. My immediate superior in the General Motors organization.

Senator O'MAHONEY. Well, who is he?

Mr. ARMINGTON. Mr. Osborn.

Senator O'MAHONEY. What is his title?

Mr. ARMINGTON. He is group executive.

Senator O'MAHONEY. He is group executive?

Mr. ARMINGTON. Yes, sir.

Senator O'MAHONEY. Is he a member of the board?

Mr. ARMINGTON. Yes; he is.

Senator O'MAHONEY. Is he a member of the executive committee?

Mr. ARMINGTON. He is a member of some of the executive committees.

Senator O'MAHONEY. How many executive committees does General Motors have? It was my understanding there was only one.

Mr. ARMINGTON. I was thinking, when I made the statement, about some of the policy committees.

Senator O'MAHONEY. Now, yours was a family corporation?

Mr. ARMINGTON. That's right.

Senator O'MAHONEY. And it is now a part of a vast stockholder-ship corporation?

Mr. ARMINGTON. It is part of a large organization; that's right.

Senator O'MAHONEY. And you see clearly, I suppose, the change that has come over industry in the United States and commerce by reason of the substitution for the family corporation doing a comparatively small business, of a gigantic corporation engaged in many businesses, but governed by the same central executive group?

Mr. ARMINGTON. Sir, I would like to put it in my own way.

The way I see the picture, we are in a big Nation. I think there is a place for small business and I think there is a place for big business. I think big business is needed to support a big country and make it go forward.

Senator O'MAHONEY. With that I will agree.

Mr. ARMINGTON. I think that our story is a story of a small company that found itself in an industry that was too big for a small-family company, and that was evidenced from the very first crawler tractor, wheel tractor, on through to the creditors' committee, and this chap from Firestone that told us we were misplaced.

It is just the fact that we, through our own efforts, were able to project this small business into an industry that was out of proportion for us, and we certainly feel that the eventual solution is an ideal one.

Senator O'MAHONEY. What is the eventual solution?

Mr. ARMINGTON. The eventual solution is that the Euclid Co. is now a part of a large organization, well able to compete in its industry, and that this has resulted in saving the stockholders' equity.

An industry has been saved for Cleveland. Our employment is up 81 percent in a brief 2 years. It is a stimulant to competition, and we are making better products for our customers. I just think it is a great American experience.

Senator O'MAHONEY. If that was good for you, is it good for these other companies with which you are competing?

Mr. ARMINGTON. I think the little stimulant would be very fine to those fellows.

Senator O'MAHONEY. Oh, a stimulant?

Mr. ARMINGTON. They did not increase their horsepower in proportion to what little Euclid was able to do.

Senator O'MAHONEY. Here is the Oshkosh Motor Truck, of Oshkosh, Wis; should that make application to get into General Motors?

Mr. ARMINGTON. Oshkosh are in a specialized field.

Senator O'MAHONEY. So were you.

Mr. ARMINGTON. We were, but our specialized field was being invaded by the large producers. I doubt very much that the large producers are invading Oshkosh's field. I don't know; I am guessing, but I doubt it.

Senator O'MAHONEY. Would you suggest, then, that any corporation which finds itself in the same position with you, should join with General Motors rather than die on the vine?

Mr. ARMINGTON. I think when a company finds itself out of place, if a big company is in a business that is logically a small business, it will find that it can't compete. When a small company finds that it is in a business that is really the logical place for a big business, it can't compete.

I think it is just a matter of getting it sorted out. Sometimes maybe it can be done, the sorting job can be done well, and maybe sometimes it can't. In our case, why, I think it was an ideal solution.

Senator O'MAHONEY. You have just said that this is a good country, it needs big business and it needs small business.

Have you any suggestion to us as to what we should do to keep a position for small business in our country, and to prevent big business from proceeding along the line of merger, which is now so obvious, to take over a larger and a larger proportion of the industry of the Nation?

Mr. ARMINGTON. Well, sir, I am not an economist, but my opinion is that free enterprise itself can solve that problem very nicely, that when either big or small business finds itself out of position, it will be unable to compete satisfactorily and it will have to solve its problem.

Senator O'MAHONEY. You know, don't you, that free enterprise all along the road has been hampered by combinations in restraint of trade, conspiracies to restrain trade; that the courts have repeatedly found verdicts that companies and individuals were engaging in these conspiracies. It has been obvious from them that small business has suffered from them.

This was so serious that when the present Attorney General took his office, he selected a special group of lawyers and professors and economists to study the antitrust laws and make recommendations. That report is before Congress. Congress, which has jurisdiction in this field, has it in mind.

Do you think, as the basis of your statement that free enterprise can solve it, do you mean that it can solve it without a law?

Mr. ARMINGTON. Sir, do you want me to answer that, not being an economist and not being a student of such things? I will be glad to tell you my opinion.

Senator O'MAHONEY. I think your opinion would be very valuable, sir, because you are the head of a very substantial part of the General Motors business.

Mr. ARMINGTON. My opinion is the same as I stated before, that there is a place for small business and a place for big business, and they will sort themselves out, naturally, under the laws of supply and demand.

Senator O'MAHONEY. Do you mean that Congress should keep its hands off; do nothing about it?

Mr. ARMINGTON. I don't believe I am in any position, sir, to make a comment on what Congress could do. I think that would be presuming that I know more about such things than I do.

Senator O'MAHONEY. I won't press you, sir. You have been very kind.

Mr. Burns?

Mr. BURNS. I just wanted to clear up one thing, to make sure that the record was correct.

I had asked you about the profits from 1946 to 1952, and you had given us the figures. Was it the policy of the company to plough back into the company substantially all the net profits?

Mr. ARMINGTON. We have realized, sir—

Mr. BURNS. I mean during that period.

Mr. ARMINGTON. I am going to answer you. We realized from the very beginning, even before we were in the hands of the creditors' committee, that we were really in potentially a big business, and that the only thing we could do was to grow as rapidly as we can, and hope that we could accumulate enough size to satisfactorily compete, to get a line of products gradually developed soon enough so that we could get enough salesmen in the field to carry us along, and naturally, we reinvested our earnings as much as we could in order to allow us to grow.

Mr. BURNS. Well, the reason I asked the question is because on the basis of the percentage figures you gave, the profits after taxes for those years, 1945 to 1952, was approximately \$14½ million, and your net worth increase was about \$13 million, and I wanted to know whether that was the result of ploughing back into the corporation the earnings.

Mr. ARMINGTON. I think there was a little of additional capital added there; the substantial growth was due to reinvested earnings.

Mr. BURNS. I think that is all.

Senator O'MAHONEY. Mr. Armington, again I want to express our appreciation to you for your answers.

I am particularly grateful for your readiness to respond, and I think that you have given an example—as Mr. Hamilton did a few days ago, a retired division manager of General Motors—that there is a possibility of the executives of big business and the representatives of the people in Congress to come together and in a frank dis-

cussion of these economic problems solve them in the public interest, both in the interest of the big unit and the interest of the small unit.

I feel very deeply that unless we follow the example which has been set at this table through the cooperation of yourself and Mr. Hamilton as representatives of big business, it will be very difficult indeed to solve this problem, which is swallowing up family companies such as yours was.

Thank you again, sir. You are excused.

MR. BURNS. We have another witness, Mr. Chairman, Mr. Peter Reed.

Senator O'MAHONEY. All right, Mr. Reed.

**STATEMENT OF PETER REED, ATTORNEY AT LAW,
CLEVELAND, OHIO**

MR. BURNS. Would you give your name to the reporter?

MR. REED. Peter Reed.

MR. BURNS. Mr. Chairman, I asked Mr. Reed to come here today because this merger or acquisition which we have been discussing represents one of the problems under section 7 of the Clayton Act, which appears to be indefinite in the guides which Congress has given to the enforcement agency and the courts.

It is our understanding that the Department of Justice looked into this merger, and I believe it would be useful for our subcommittee to understand the type of problem presented in considering such a situation.

Mr. Reed was the attorney for the Euclid Co., and I would like to ask him some questions with reference to the extent to which the Department of Justice studied this acquisition.

Senator O'MAHONEY. Well, may I say, Mr. Burns, so that there will be no misunderstanding, we have, of course, had many witnesses to tell us about the manner in which departments and commissions in the Government operate in this field.

Anybody who has been a Member of Congress for any long period knows that in the Interstate Commerce and the Federal Trade Commission, in the Power Commission, in the Department of Justice, these questions are constantly arising, and that frequently representatives of companies in all good faith go before these Commissions to discuss the problems which are presented when questions of merger come along.

The Department of Justice, through the Antitrust Division, does that constantly. The Federal Trade Commission does it, and so forth; and one of the reasons the study was made by the Attorney General involved the difficulty of finding a rule. In industry the trend is toward standardization. In law there does not seem to be any standardization developed yet so far as mergers and combinations are concerned.

The rule of reason applies and, therefore, it is a question which we must study.

I make that statement because I want you to know the committee is not at all endeavoring to embarrass you or your client in the questions that will be asked by the counsel for the committee.

MR. REED. Thank you, Senator.

Mr. BURNS. Mr. Reed, did you represent the Euclid Road Machinery Co. prior to its acquisition by General Motors in October 1953?

Mr. REED. Yes; I did.

Mr. BURNS. Were you a director of the company?

Mr. REED. I was a director beginning about 1943 or 1944; that is just a recollection. It would have to be subject to some tolerance.

Mr. BURNS. Now, prior to the actual consummation of the acquisition, was there any discussion with representatives of the Antitrust Division of the Department of Justice?

Mr. REED. You mean by me, personally?

Mr. BURNS. Yes.

Mr. REED. Yes, there was.

Mr. BURNS. Will you tell us about when that was and what the circumstances were under which the conference was called?

Mr. REED. Early in August of 1953 a proposal was—an offer was made by General Motors Corp. to be transmitted to the individual shareholders of Euclid offering an exchange of shares.

I was at work with others of my partners in the mechanics of carrying out the things needed to be done to see whether or not the exchange would be accepted or not, and if so, to effectuate it.

I may say, Senator, that I am a practicing lawyer, and a lawyer does not like to discuss his client's affairs with anyone except the client. Nevertheless, I have the consent of Mr. Armington to discuss this subject matter, which I discussed with you last night, and I assume that is what the committee wants.

Mr. BURNS. Yes.

Mr. REED. I would not want it to be thought among my other clients that I discuss their affairs generally, Senator.

Senator O'MAHONEY. Well, it is clearly understood then that you are operating now, testifying now, with the clear understanding and consent of your client.

Mr. REED. In the middle of September, I cannot recall the exact date, but I would pinpoint it at the 15th or 16th of September, I received a telephone call from Mr. Hogan, who is the general counsel for General Motors, saying that he had been requested to appear before a section of the Department of Justice in Washington to discuss this proposed acquisition which had been the subject of a great deal of publicity in the press.

He asked me if I would join them because I had some knowledge of the situation from Euclid's point of view. I said that I would, and I did join them here in Washington on a date, the 15th or 16th or perhaps the 17th of September.

We met in the Department of Justice with 5 gentlemen, 3 of whom I can name, Mr. Kramer, Mr. Jacobs, and Mr. Dufner; the other 2 I cannot name, but there were 5 gentlemen who inquired of us for at least 4 hours, and perhaps 5 hours, concerning the details of the transaction, the background and all.

At that time I spoke only on behalf of my client, and based on the facts which I knew in that respect. I had no definitive information concerning General Motors at that time at all, and I did not presume to speak for them.

We answered the questions propounded to us fully and completely, to the best of our ability. We covered the entire range of facts—well, just generally—it was a complete investigation into the entire sub-

stance of the transaction, what the effect would be, the product that Euclid made as compared to the product that General Motors made.

I did not go down prepared with any material. I was not asked to. We did leave with the committee a rather complete list of the technical specifications. I think Mr. Armington gave you one; I think that green thing that you have over there, if that be for 1953. I do not know whether it is or not, but it was a complete list of the principal products of Euclid Road Machinery Co. as they were being made and marketed in 1953.

Mr. BURNS. This happens to be from the Euclid division of General Motors.

Mr. REED. Mr. Armington has handed me—Mr. Armington, is this the 1953—

Mr. ARMINGTON. Yes.

Mr. REED. I must say to you gentlemen I cannot say with certainty that this is complete, but I do say to you from my memory this is the typical thing, and it is my belief that we gave them all and substantially all of this document.

Now, this is the rear dumps, the bottom dumps, the coal hauler, yes, we discussed those; the hauler, we discussed those; the scraper, which was then a very new product, as I recall it, and in the painful stages of experimentation; we went through all of those with the various members of the committee.

I hand you that with the express understanding that I do not warrant, Senator, that is complete, but that is representative of the material that I left with the committee.

Senator O'MAHONEY. The committee in the Department of Justice?

Mr. REED. The committee, the group with whom we met; there were five of them. It was a very complete inquiry into the transaction, its background, the intentions, and all of that sort of thing.

I kept no notes of the meeting; I have no record from which I can go beyond my memory, which is, I think, reasonably good, although I did not charge myself to remember it; I thought it was a matter of explanation that would not arise again.

Mr. BURNS. Did any of those of the Department of Justice staff inquire as to the competitive position in the industry in which Euclid was at that time?

Mr. REED. They inquired very much as to that.

Mr. BURNS. What kind of information did you have available to answer those?

Mr. REED. None except my general understanding and memory. I felt rather close to it although I was not an officer of the corporation, and I did not have access to the details. I was familiar with the growing strength of the competition from the three big manufacturers. I was very acutely with the financial problem that the company faced. I think if Mr. Armington had been more candid that both he and myself and the other board of directors lay awake nights for many months wondering how we could ever resolve our bank loans which were over \$6 million. We simply saw no means of doing it.

What was your question again? I think I got off the track.

Mr. BURNS. I think you answered it.

Mr. REED. Yes, the competitive situation.

Mr. BURNS. Yes.

Mr. REED. Yes.

We discussed that and we discussed at length the fact that Euclid was unable to compete because it was engaged in the manufacture and sale of what was, in fact, a highly specialized and a specific tool, and not in a line of business; that it could not command the respect of the contracting fraternity in buying, it could not command the necessary support of distributors or dealers because they did not have the wide enough line; they did not have means of extending credit.

It was a struggle to build a new building. The board of directors used to discuss at length whether we could invest \$12,00 in a new tool, and I spent many days discussing our balance sheets with our bankers.

I should say to you I had at the meeting with me either the monthly report of the company for the month of June or July 1953, or the accumulation of those monthly reports for the year, up to June 3. But I do not have them now. Those were all destroyed when I cleared out my files something over a year ago, but it was simply a copy of the published monthly reports.

They discussed the numbers of the units that the company made, they asked me for my views as to the relative position in the trade, and I told them to the best of my ability, and I believe my answers were reasonably accurate, showing that the big competition, the big money competition, was moving in, the scraper field was being invaded: the bottom dump field was being invaded, the scraper was becoming a very important tool, growing very rapidly.

Our end dumps were not growing rapidly, our bottom dumps were limited to the soft earth-hauling operations such as the levees and the dams, and we were in what I would call a static market; whereas the scraper and the crawler were the tools which we had to have if we could go ahead and maintain our position.

We saw no means of doing it. Our financial situation was—Mr. Armington insists it was sound, yes; it was a firm company but the means of going ahead simply were not there, gentlemen; that is my opinion.

Mr. BURNS. Did you tell the Department of Justice that the physical plant had expanded approximately eight times its size since the war?

Mr. REED. I think I did. We certainly discussed the figures and the balance sheet showing the investment in plant which necessarily must have reflected that.

Mr. BURNS. Was the Department told that Euclid was the leading producer of the products which were its principal line of business?

Mr. REED. They were aware of that before the meeting. Their questions clearly indicated that. There never was any question about that. I am referring to the end dump truck only.

That was the only unit in which the company retained leadership. The bottom dumps, they were losing position very rapidly, and the scraper which we were trying to get into was growing very rapidly in the hands of our competitors, so that our position was only dominant in that one tool only, and that was the end dump.

Mr. BURNS. That was the principal product that the company was making, which was responsible for most of its net annual income, was it?

Mr. REED. Not if you exclude—what was your last question?

Mr. BURNS. Suppose you read it, Mr. Reporter.

(The question was read.)

Mr. REED. I would not want to answer that.

We had invested money in some of the big end dump trucks that had been very expensive, and I would not want to be quoted in saying that was our principal profit item any more.

Mr. BURNS. Well, I think that Mr. Armington indicated that probably up to 80 to 90 percent of the income was from these trucks.

Mr. REED. Well, the revenue, I do not think he said income—I think he would be mistaken if he said that. Maybe I am wrong, I do not know. The books would speak for themselves; I am speaking from memory; I do not know.

Mr. BURNS. We were told about total sales.

Mr. REED. Aggregate sales.

Mr. BURNS. Well, now, was the department told of the increase of net worth from \$3 million to \$16 million in that period?

Mr. REED. Oh, we outlined very clearly what the record would be and the fight that the family had made to retain its position. Its dividends were very, very small, gentlemen; almost all of its earnings—the family was not well-treated as owners of that company in an effort to keep it up.

Mr. BURNS. But they still owned the company?

Mr. REED. They still owned the company.

Mr. BURNS. It had increased from \$3 million to \$16 million in a period of 6 years?

Mr. REED. A very small dividend was being given—they received very small dividends.

Mr. BURNS. Was there any discussion about the effect on competitors of General Motors such as Cummins that this acquisition might have?

Mr. REED. The question of engines and all of its components, the source of it was discussed in rather complete detail.

Mr. BURNS. After the acquisition took place, was there any discussion as to what General Motors would do with the Euclid division?

Mr. REED. Yes. It is my recollection that they intended to operate as a division, but to liquidate the company, to operate it as a division under the Armington family, and that they intended not to disturb in the slightest the distribution system, but to foster it and improve it if they could, because they were going to try to solve the competitive problem which the Armington family could not solve by itself.

Mr. BURNS. Do you recall whether there was any discussion of the desirability of standardizing production and using one engine instead of two?

Mr. REED. Well, I think there are two questions in your statement, if I may say.

Mr. BURNS. Well, you can divide them up and answer them separately.

Mr. REED. They are unrelated.

Yes. The necessity for getting into production, standardized production and reduced costs to meet competition—you see, our competition all were bumper-to-bumper manufacturers; that is, Caterpillar made everything, International Harvester made everything, Allis-Chalmers made everything, and they were not in the position of having to buy components, and they were not in the position of having to design 2 or 3 models of the same unit.

They made a single standardized unit, and that was the thing, in my book as a director of the company, which was murdering Euclid, and we discussed it, that was one of the reasons why Euclid was compelled to find help from outside sources, someone who could enable us to do that thing or Euclid was through. That was discussed in detail.

Mr. BURNS. Was this information with respect to the increase in size of the physical plant, the amount of earnings and the amount of increase in net worth, presented in writing to the department?

Mr. REED. Not by me. There was one place where I think that it might have been submitted.

Mr. Hogan, at the conclusion of the evidence, handed to one of the gentlemen who was acting as chairman, and I cannot tell you which one, a copy of the application to the New York Stock Exchange for the listing of the shares to be issued for the Euclid shares, and that, in my recollection, has a complete financial record back 5 years, a description of the company. It is almost in the form of a prospectus, very complete, and that was handed by Mr. Hogan to the one who was acting as chairman of the meeting.

Mr. BURNS. Was there any decision rendered by the Department of Justice following the conference?

Mr. REED. I do not know.

Mr. BURNS. That was just this one conference?

Mr. REED. One conference; it was very complete, very exhaustive. I was there at Mr. Hogan's invitation, and that is the last I heard of it.

Mr. BURNS. The last you heard of it?

Mr. REED. The last I heard of it.

Senator O'MAHONEY. May I interrupt you?

Mr. BURNS. That is all I have.

Senator O'MAHONEY. Were you asked the question as to what reasons General Motors expressed for taking over the Euclid firm?

Mr. REED. I was not asked any such questions as that at all. There was discussion between Mr. Hogan and one of the gentlemen on that subject. I was not a party to it because I knew nothing about the General Motors situation.

Senator O'MAHONEY. You see, the picture which has been drawn here, and it is made very, very clear by you, that the directors of Euclid were staying awake at night wondering how the \$6 million of indebtedness could be paid off.

Mr. REED. That is right.

Senator O'MAHONEY. You felt you were in a segment of the industry which was declining in importance, two of your products, so far as you were concerned—

Mr. REED. That is right.

Senator O'MAHONEY. Two of your products.

Mr. REED. In relative importance, Mr. Senator.

Senator O'MAHONEY. Yes; all right. Two of your products were being turned out by competing companies. They were competing companies of the Euclid Co., and the Euclid Co. was unable to finance the expenditures required to meet the trend—

Mr. REED. That is right.

Senator O'MAHONEY (continuing). Which was developing. So, foreseeing that trend, explorations were undertaken for the possi-

bilities of mergers; two companies were mentioned by Mr. Armington, Allis-Chalmers and International Harvester.

Then he mentioned General Motors, and finally General Motors took it over and furnished the money necessary to enable Euclid to do what it could not do of itself.

Now, General Motors is not represented to us as being an angel distributing money to keep companies going. It is guided by men who are very able in the field of finance, and their capital invested is invested for the purpose of producing profits.

Now, evidently they saw some profit opportunity in taking over Euclid. Was that at any time discussed by you or others?

MR. REED. I had no discussion with anyone from General Motors on any such subject at all.

I had one meeting with representatives of General Motors, at which time we discussed only the balance sheet figures. My particular emphasis was on an analysis of the profit sharing and the pension fund which the company had, which was quite involved, and the question of whether or not the company had mortgage indebtedness or obligations and things of that sort; that is the only—

Senator O'MAHONEY. As a director of the company?

MR. REED. That was as counsel, Senator.

Senator O'MAHONEY. Well, I was framing another question.

MR. REED. But there were no other meetings which I attended at all, none whatsoever.

Senator O'MAHONEY. Not as counsel, but as a member of the board of directors, did you or do you care to say whether you approved the merger?

MR. REED. I do not know whether I should or not, but the fact is that I did approve the merger. I felt this was a solution to an otherwise almost insoluble problem.

Senator O'MAHONEY. Did you frame at any time in your own mind an opinion that you are willing now to express as to why General Motors felt willing to venture into this merger?

MR. REED. No, Mr. Senator; I do not care to speak for them. I felt it was a fine thing, and I felt it to be a fine thing; it has to be good on both sides. I had no reservations on it.

Senator O'MAHONEY. It had to be good on both sides?

MR. REED. It had to be.

Senator O'MAHONEY. I will accept that as an answer.

MR. REED. I think you must, Senator.

MR. BURNS. That is all I have.

Senator O'MAHONEY. You have no other witnesses this evening?

MR. BURNS. No, sir.

Senator O'MAHONEY. Mr. Reed, we are very much obliged to you. Do you care to add anything?

MR. REED. Nothing at all.

I should like to have the record show that I have responded to your subpoena, sir, and that I am discharged therefrom.

Senator O'MAHONEY. You are, indeed.

MR. REED. Thank you, Senator.

Senator O'MAHONEY. The meeting will stand in recess until 10 o'clock tomorrow morning.

(Whereupon, at 4:35 p. m., the subcommittee recessed, to reconvene at 10 a. m., Friday, November 18, 1955.)

A STUDY OF THE ANTITRUST LAWS

FRIDAY, NOVEMBER 18, 1955

UNITED STATES SENATE,
SUBCOMMITTEE ON ANTITRUST AND MONOPOLY
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met, pursuant to recess, at 10:20 a. m., in room 424, Senate Office Building, Senator Joseph C. O'Mahoney presiding.

Present: Senator O'Mahoney (presiding).

Also present: Joseph W. Burns, chief counsel; Donald P. McHugh, assistant counsel; and Joseph A. Seeley, assistant counsel.

Senator O'MAHONEY. Mr. Burns, are you ready to proceed?

Mr. BURNS. Yes, Senator.

The manufacture and distribution of automotive parts and accessories is a very important part of the automobile industry. Although the automobile manufacturers make many parts themselves, hundreds of smaller independent manufacturers supply many other parts which are assembled into an automobile, or used as replacements. The replacement market supports many thousands of independent businessmen as wholesalers, jobbers, supply stores, service stations, et cetera. It has been estimated that the replacement market alone for parts and accessories is in excess of \$2 billion at the wholesale level. The combined annual market for such automotive products, including both original equipment and replacement uses, is reputed to exceed \$8 billion.

One problem to be considered is the nature of General Motors' role in the sale and distribution of parts and accessories. Complaints have been made that coercion is exerted in various ways by General Motors upon its dealers, restricting their right to purchase parts and accessories from independent sources. Several years ago the Federal Trade Commission issued an order to General Motors to cease and desist from such coercive practices. The Federal Trade Commission also issued an order against General Motors in 1953 directing its A-C Spark Plug division to cease engaging in price discrimination and exclusive dealing practices. We wish to determine whether the Commission's orders have been effective in eradicating the consequences of those practices.

In January 1954 General Motors inaugurated a new program for the distribution of parts and accessories at wholesale. The subcommittee seeks to know what the effect of this program has been upon the automotive parts industry.

The first witness today will be Donald P. MacDonald, attorney with the Federal Trade Commission: and Assistant Counsel Joseph A. Seeley will examine him.

Senator O'MAHONEY. We are glad to have you with us, Mr. MacDonald. Please proceed.

STATEMENT OF DONALD P. MacDONALD, ATTORNEY, FEDERAL TRADE COMMISSION

Mr. SEELEY. Mr. MacDonald, do you have a prepared statement?

Mr. MACDONALD. I do.

Mr. SEELEY. Will you proceed.

Mr. MACDONALD. My name is Donald P. MacDonald. I am an attorney for the Federal Trade Commission. I am presently assigned to the headquarters staff of the Bureau of Investigation, but for 20 years—including Army service—I was assigned to the Commission's Chicago office as an investigating attorney, except that from November 1952, to August 1954 I was attorney in charge of that office.

Your committee has requested that I appear and testify in this inquiry, and the Federal Trade Commission has authorized me to make a statement, as you have requested.

Senator O'MAHONEY. When you speak of the Bureau of Investigation, you mean, of course, the Bureau of Investigation of the Federal Trade Commission?

Mr. MACDONALD. Of the Trade Commission; yes, sir.

Senator O'MAHONEY. I wanted to make that clear on the record. There might be some misunderstanding.

Mr. MACDONALD. Most of the passenger-car manufacturers were located in the territory assigned to the Chicago office, which stretched from Detroit to Denver.

Before coming to the Commission I worked for a Madison, Wis., law firm and did not have any contact with the automobile industry.

In 1934 the Chicago office was working on a file involving the alleged forced sale of parts and accessories by General Motors Corp. to its automobile dealers. Several of us worked on this file, and I was assigned to write the investigational report to the Commission. Thereafter various other investigations were undertaken involving the practices of various automobile manufacturers, and I either investigated them or participated in or supervised such investigations.

General Motors dealers complained that they were not free to buy parts and accessories from local parts jobbers. Parts and accessories manufacturers and jobbers complained that they were unable to sell parts and accessories to General Motors dealers, and they charged General Motors was monopolizing the parts and accessories business of their independent dealers.

A complaint was issued in this matter by the Commission in 1937, and I was assigned to assist the trial attorney at the hearings.

Two issues were raised. General Motors Corp. was charged with forcing its distributors to buy parts and accessories from their respective automobile divisions, such as Chevrolet and Pontiac, to the exclusion of competing sellers, through the use of intimidation, oppression, and coercion, including threats of cancellation and actual cancellations of new-car franchises, as well as shipping unordered parts and accessories, both directly and by attachment to new cars or in the trunks of new cars. The complaint charged that the use of these methods to force dealers to buy their accessories and supply requirements exclusively from the General Motors division from which they purchased

automobiles constitutes an unfair method of competition and a violation of section 5 of the Federal Trade Commission Act. The second issue raised in the complaint challenged a clause which was continued in the new-car franchise of each General Motors dealer.

This clause read:

Dealer agrees that he will not sell, offer for sale, or use in the repair of Chevrolet [Pontiac, Oldsmobile, and Buick] motor vehicles secondhand or used parts or any part or parts not manufactured by or authorized by the Chevrolet [Pontiac, Oldsmobile, Buick] Motor division—General Motors Sales Corporation.

However, the State of Texas has a very strict antitrust section in its statutes, so in that State the foregoing contractual provision was more limited in its scope:

Dealer agrees that he will not sell * * * as genuine new Chevrolet repair parts or any part or parts not manufactured by or authorized by Chevrolet * * *.

It was alleged that this provision in the General Motors contract constituted a violation of section 3 of the Clayton Act in that it involved an exclusive dealing agreement which had the effect of substantially lessening competition and the tendency to create a monopoly in the parts business used on General Motors cars.

General Motors denied that it had employed illegal methods in the sale of parts and accessories to its dealers and further denied that the questioned contractual limitation constituted a violation of the Clayton Act, in that it did not have the effect of substantially lessening competition.

General Motors relied upon the decision in *Pick Manufacturing Company v. General Motors Corporation, et al.*, handed down in 1936, which eventually was passed upon by the Supreme Court in 299 United States Reports 3. In this case General Motors Corp. sued Pick Manufacturing Co. for trademark infringement and charged that Pick had misappropriated the Chevrolet symbol, and other symbols, I might add, on the hub caps manufactured by Pick. Pick countered with a suit in which it—

challenged the validity under section 3 of the Clayton Act of a provision of the contracts made with dealers by the selling organizations of General Motors Corp.

The provision was the one to which I have just referred.

The Supreme Court said:

The district court dismissed the bill of complaint and warrant of equity and its decree was affirmed by the circuit court of appeals (80 F. (2d) 641). Upon the evidence adduced at the trial, the district court found that the effect of the clause had not been in any way substantially to lessen competition or to create a monopoly in any line of commerce. This finding was sustained by the circuit court of appeals.

The Supreme Court thereupon affirmed the decree.

An examination of the record in the Pick case demonstrated Pick had relied upon the language of the statute which declared:

It shall be unlawful * * * to * * * contract for sale of goods * * * on the condition * * * that the * * * purchaser * * * shall not use or deal in the goods * * * of a competitor * * * where the effect of such * * * sale * * * may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

Counsel for the Pick Manufacturing Co. relied upon the words of the statute where the effect may be. In this he appeared to be ahead

of his time because the Court concluded that the contractual provision had not substantially lessened competition.

However, Commission's counsel met the burden of demonstrating that competition had been substantially lessened by calling many manufacturers and their factory salesmen and jobber outlets who testified that they had been repeatedly told by various General Motors dealers that they were required to buy their parts and accessories from their General Motors car division and that General Motors did not permit them to buy so-called nongenuine parts from local jobbers. The manufacturer and jobber testimony demonstrated that by thus fencing its dealers off, General Motors had reduced the sales of the independent parts and accessories manufacturers and had substantially diminished competition.

Many parts manufacturers testified that they made parts which were carefully engineered and produced to meet the specifications as to material, measurements, tolerances, et cetera, of the parts being sold by General Motors to its dealers. Some of these manufacturers were supplying parts and accessories to General Motors and they testified that there was no substantial difference between the parts which they sold to their jobbers for resale to General Motors dealers and the same parts which they sold to General Motors Corp.

Nevertheless, their jobbers testified that they were unable to sell these high quality parts and accessories to General Motors dealers.

Various General Motors dealers and ex-dealers testified they were told by their Chevrolet division parts salesmen (Pontiac, Oldsmobile, et cetera) as the occasion may be, that they must confine their purchases of parts and accessories to those purchased from the Chevrolet factory (Pontiac, Oldsmobile, et cetera).

General Motors' contract provided that the company representatives—

shall have the right at any reasonable time * * * to inspect and check over the dealers' stock of repair and replacement parts if in seller's judgment a sufficient quantity of parts and repair and replacement purchases are not then in dealer's stock, dealer hereby agrees to immediately order such parts as may be recommended by seller.

Several dealers testified that Chevrolet, Oldsmobile, et cetera, salesmen did inspect their parts and accessories supply room and directed them to get rid of "nongenuine" parts and accessories and to discontinue purchasing such items except from Chevrolet, and the other divisions. Additional quantities of parts and accessories were shipped without order when a dealer was found to be buying such items from local jobbers.

Dealers testified that they had to resort to subterfuge and concealment to avoid being disciplined by the factory representative. There was testimony that Motorola radios had to be removed from the show floor and secreted "upstairs" so that the factory representative wouldn't see them. They used the word "upstairs" as a substitute for the ladies' washroom, as a matter of fact.

Other dealers and dealers parts men testified that they were directed to discontinue buying such parts as A-C spark plugs and New Departure bearings, Delco-Remy parts, and other items which had been made by General Motors and sold through its United Motors division to local parts jobbers. Factory salesmen complained that these genu-

ine General Motors parts were not in Chevrolet boxes and when the dealers' parts men claimed they were the same thing, the factory man said, "You know what I mean, you bought outside," and then this parts man was informed by the factory representative—that is, the dealer's parts man was informed by the factory representative: "I will tell you one thing, if you want to work for Chevrolet, you'll have to quit buying outside. If you don't, it will cost you your job."

I may add parenthetically that man was not working for Chevrolet; he was working for an ostensibly independent dealer supposedly protecting that dealer's interest; but he was threatened with the loss of his job if he did not buy 100 percent Chevrolet.

United Motors jobbers testified that it was necessary for them to wrap General Motors parts in plain paper—that is, the General Motors parts that they bought from the corporation, they had to wrap them in plain paper—so that the dealer who purchased them could put them in stock without being caught by the factory parts salesman for buying General Motors parts from United Motors jobbers.

Testimony disclosed that much unordered merchandise was shipped by the General Motors car division to its dealers. Sometimes it was in the trunk of the car, sometimes it was attached to the car, and sometimes it was just shipped in a crate. The evidence disclosed that dealers who were caught buying parts and accessories from jobbers were warned that they would be reported to the zone manager. Sometimes protesting dealers were told "they should know which side their bread was buttered on" and "with some cooperation from the dealer they could expect some cooperation from the factory."

Senator O'MAHONEY. This was apparently in the lower echelons?

Mr. MACDONALD. Yes, sir.

Senator O'MAHONEY. Was there any evidence that the upper brackets were aware of what was going on?

Mr. MACDONALD. At General Motors?

Senator O'MAHONEY. Yes.

Mr. MACDONALD. They claimed they did not.

There is, however—there were documents introduced into the record which pretty much speak for themselves, from which the Commission found that there was knowledge; in other words, there were printed documents, instructions issued.

The company contended, of course, that it was their position that the salesmen should sell and not force, but there are some documents that we can obtain for you if you are interested.

Senator O'MAHONEY. Well, I think they will be of interest to the committee.

Mr. MACDONALD. Yes, sir.

Testimony indicated that on occasions dealers were threatened with cancellation of their franchises unless they accepted and paid for the parts and accessories which were shipped but not ordered by them and in some cases those franchises were in fact canceled. Instances were cited wherein dealers were required to sign agreements to take quantities of accessories before they were permitted to renew their annual franchises.

The Commission's findings of fact show that General Motors Corp. coerced and compelled its dealers to purchase parts from it and prohibited purchases from outside sources, except in cases of emergency

when so-called genuine General Motors parts or accessories were not available in the General Motors warehouse. The findings were that the entire plan was so designed as to prevent a dealer from making purchases from jobbers or other manufacturers and to eliminate from General Motors dealers' shelves all parts and accessories other than those sold and distributed by General Motors Corp. The Commission found that threats of cancellation and shipment of unordered accessories had occurred and that because of these practices and because of the provision in the General Motors dealer contract that General Motors dealers agreed not to sell or use parts not manufactured or authorized by General Motors, practically all of the approximately 14,000 General Motors dealers had been removed as customers as well as prospective customers of independent manufacturers and jobbers. The Commission concluded that the effect thereof had been to substantially lessen competition and to tend to create a monopoly.

Senator O'MAHONEY. Do you have a copy of this finding?

Mr. MACDONALD. Yes, sir.

Senator O'MAHONEY. I would like to have it for the record.

Mr. MACDONALD. Do you have one there?

Senator O'MAHONEY. Apparently we have.

Do you want the extra one?

Mr. SEELEY. Yes, please, Senator.

Senator O'MAHONEY. You do not need to look for it now, Mr. MacDonald. We will insert this at the termination of your testimony.

Mr. MACDONALD. I have one for you.

Senator O'MAHONEY. Proceed.

Mr. MACDONALD. On November 15, 1941, a cease-and-desist order was entered in this matter.

The Commission's order to cease and desist directs General Motors—

Senator O'MAHONEY. May I ask at this point when that investigation began?

Mr. MACDONALD. It was going on when I arrived in the Chicago office in March 1934, but it had not been going on for very long prior to that time.

Senator O'MAHONEY. Well, at least it had been going on for approximately 7 years before the cease-and-desist order was issued?

Mr. MACDONALD. Yes, sir; it was an extreme burden to assume to meet the principle ostensibly laid down in the Pick case.

I had discussed the matter with counsel for General Motors in a very friendly manner, and with Mr. Carl Rix, who, lately, was president of the American Bar Association, and who represented Pick, and was from my home State, and had been in touch with the matter while they were working on it, and we recognized we were assuming the laboring oar.

We were, however, supported in our theory, because during the investigation, other litigation took place of a private nature, and also I investigated and the Commission tried the Carter Carburetor case which involved automotive parts and involved tie-in sales and exclusive dealing, and we had a favorable decision in that matter, and in the court of appeals, so we felt our hand was strengthened, and we were justified in expending the energy to proceed and present this full problem to the Commission on a full record with a good cross-

section of both the manufacturers and the jobbers being heard from as well as the dealers.

Mr. Rix had relied on very few witnesses to support his contention. Senator O'MAHONEY. I see.

Mr. MACDONALD. Possibly the court would find differently these days, but at that time it did not. As I say, I thought he was ahead of his time.

The Commission's order to cease and desist directs General Motors Corp. and General Motors Sales Corp., in connection with the sale and distribution of automobile accessories, supplies, and similar products, to cease and desist from:

(1) Requiring dealers, by means of intimidation or coercion, to purchase or deal in accessories or supplies sold and distributed by the respondents or by anyone designated by them;

(2) canceling, or directly or by implication, threatening the cancellation of, any franchise or agreement with dealers, because of their failure or refusal to purchase or deal in the respondents' accessories or supplies;

(3) canceling, or directly or by implication threatening the cancellation of, any franchise or agreement with any dealer, for purchasing or dealing in accessories or supplies not obtained from the respondents;

(4) shipping accessories or supplies without prior orders therefor, or canceling, or directly or by implication threatening the cancellation of, any franchise or agreement with a dealer because of a failure or refusal to accept accessories or supplies shipped without prior order; and

(5) refusing, or threatening to refuse, to deliver automobiles to dealers because of a failure or refusal to purchase or deal in the respondents' accessories or supplies.

The Commission order also directs the respondents to cease and desist from violating the exclusive dealing section of the Clayton Act by entering into, enforcing, or continuing in operation or effect, any franchise or agreement for the sale of automobiles or any contract for the sale of, or selling, automobile parts on the condition, agreement, or understanding that the purchaser shall not use or sell automobile parts other than those acquired from the respondents, unless such condition, agreement, or understanding be limited to automobile parts necessary to the mechanical operation of an automobile, and which are not available, in like quality and design, from other sources of supply.

That would apply particularly to their own AC or other genuine parts.

The order was very slightly modified in June of 1942. General Motors filed an appeal with the United States Circuit Court of Appeals for the Sixth Circuit, but subsequently withdrew the appeal. General Motors filed a report of compliance in which it indicated that it had eliminated the objectionable clause from its contract and had substituted a provision that the dealer would not sell or use, in the repairing of General Motors vehicles, any part which he represented to be genuine unless it was in fact genuine. General Motors also reported that it had notified all of its employees of the provisions of the cease-and-desist order and directed them to conform thereto.

From time to time scattered complaints have been received from automobile parts jobbers and from associations of automobile parts

jobbers that General Motors was violating this order. These charges have been investigated. A full-scale compliance investigation has been conducted during which the records of General Motors Corp. and various of its regional offices have been examined and a large number of dealers and ex-dealers have been interviewed by representatives of each of the Commission's seven branch offices. At the same time a large number of other parties who appeared to have information such as parts jobbers and manufacturers, as well as associations of dealers and jobbers, were also interviewed.

The results of this investigation are now being reviewed by the Assistant General Counsel in Charge of Compliance who is preparing a report for the Commission.

In addition to the foregoing matters, General Motors has also been directly involved in the following formal FTC proceedings relating to automotive matters. Docket 5620 involved price discrimination and exclusive dealing by the AC Spark Plug division of General Motors Corp. in the sale of spark plugs and other AC products in violation of section 2, which is the Robinson-Patman amendment, and section 3, exclusive dealing section of the Clayton Act. A cease-and-desist order was entered in this matter in 1953.

Docket 3001 involved General Motors Acceptance Corp., a General Motors subsidiary. In 1939 the Commission issued a cease-and-desist order requiring the corporation to desist from false and misleading advertising of its so-called 6-percent finance plan. The hearings established and the Commission found that the company's 6-percent finance plan advertising had misled the public into the belief that General Motors cars could be financed at a simple interest rate of 6 percent. In fact, the interest amounted to about 12 percent. This order was appealed and the Circuit Court of Appeals, Second Circuit, sustained the Commission's cease-and-desist order in 1940 (114 F. (2d) 33).

Docket 3174 involved the false and misleading advertising of the f. o. b. Detroit price of the various General Motors cars. The order entered in this matter required General Motors Corp. to cease and desist from representing as the price of any automobile in any advertisement any price other than the true retail price at the place of sale. There was no appeal from this order by General Motors.

The practice of advertising automobiles, for example, at \$675, whereas the price thereof, including the standard accessories, bumpers, spare tire, and so forth, was actually \$901.50 at the factory, was industrywide. All of the passenger-car manufacturers, including General Motors, voluntarily discontinued this deceptive advertising, and the other passenger-car manufacturers entered a formal stipulation with the Commission that they would not reengage therein. Ford and General Motors also discontinued the practice but declined to sign the stipulations whereupon the Commission held hearings and issued cease-and-desist orders against both Ford and General Motors.

Docket 4724 involves a cease-and-desist order entered in 1948, relating to the Guide Lamp division of General Motors Corp. and which restricted the corporation's representations as to the effectiveness of its fog lights.

In addition to the foregoing matters, the Commission has engaged in several investigations involving the practices of the various divisions or subsidiaries of General Motors Corp. wherein monopoly and also

deceptive practices were the subject matter under inquiry. Several such matters are still under investigation. Since these informal investigations are not a matter of public record, these have not been made the subject of comment in this statement.

In 1938, Public Resolution 87 was adopted by the 3d session of the 75th Congress. It was the so-called House Joint Resolution 594, sponsored by Congressman Gardner Withrow, of Wisconsin. He called upon the Commission to make a general investigation of the automotive industry. In 1939, the Commission submitted to the 1st session of the 76th Congress its report entitled "Report on Motor Vehicle Industry." General Motors and the other vehicle manufacturers were the subject of extensive comment in this report.

In 1952, the Government Operations Subcommittee of the Committee on Expenditures in the Executive Departments of the House of Representatives requested the Commission to initiate an investigation of automotive industry products respecting parts prices being paid to parts manufacturers and vehicle assemblers by the Government. On July 6, 1954, the Commission reported with respect to this investigation.

I was connected with most of those matters but as a field investigator, not in the backfield as a policymaker.

Senator O'MAHONEY. What was the nature of this last report, July 6, 1954?

Mr. MACDONALD. Well, the Truman and then the Mead committee after World War II questioned the Army's method of acquiring motor-vehicle repair parts for military vehicles and the Hardy committee during the Korean campaign raised similar questions of the Pentagon and of the Detroit Tank and Automotive Center as to the method of acquiring parts and as to the prices being paid by the Government for repair parts for vehicles.

Hearings were held by the Hardy committee in Detroit and elsewhere in the country. Both the Hardy committee and the Pentagon, that is, the Department of Defense, requested the Federal Trade Commission to interest itself in the matter, and a member of our staff from Washington was sent to Detroit, and I was called up from Chicago to Detroit to listen to the questions and answers, and then to examine the record and to institute an investigation.

We did so and reported back to the committee at the conclusion of our investigation. They were concerned with the inability of the Government to buy parts directly from the parts manufacturers, and they questioned the propriety and the necessity and the reasonableness of the practice in the trade of the truck assemblers attempting to monopolize the resale of repair parts for their trucks.

There was testimony in the record by some of the smaller truck manufacturers that they had to have the monopoly of the repair parts sales in order to continue to exist, and that the integrated company such as General Motors Corp. and Ford could enjoy a profit off of the various items that they produced, but that a truck manufacturer, such as Diamond T, and I am thinking of the president of that company's testimony, which I observed, were extremely hard put to be able to make and sell trucks unless they could enjoy the profit out of the controlled sale of the replacement parts and accessories.

Senator O'MAHONEY. And what was the nature of the recommendation, if any, made in this report?

Mr. MACDONALD. We made no recommendations, sir. We wrote the letter and told them what we found.

Senator O'MAHONEY. And what was the substance of that finding?

Mr. MACDONALD. That these practices were being carried on by various truck manufacturers and their parts suppliers in an informal manner which did not appear to warrant proceedings for violation of the antitrust laws.

Senator O'MAHONEY. Well, wasn't the effect of the practice which it found substantially this: That the Department of Defense, the Army, the Navy, or the other branches, having bought a truck from a particular manufacturer on orders of the manufacturer, and then having transmitted or having sent that truck to some training center, some camp where there were local parts dealers, that the Government did not patronize the local parts dealers but purchased the parts from the central factory at a higher price than they could have obtained from the local parts dealer, or in any event, wasn't the effect of it that the local parts dealer near a military establishment was unable to supply parts that were needed at that particular site?

Mr. MACDONALD. Yes, sir, except as to the word "price." I would say yes all the way through in answer to your question, and as to price, I am not sure.

You appreciate that I put it together and sent a report down to the Commission, but when all of the various factors were reviewed, they were not reviewed by me but by somebody back here in Washington.

Senator O'MAHONEY. Yes, I understand that. But I remember the investigation and the complaints that were made. It seemed to indicate that local free enterprise, as the phrase goes, was being hemmed around by the national manufacturer.

Mr. MACDONALD. That was the fact.

Senator O'MAHONEY. And being prevented from engaging in a business to which one would imagine that normally ought to have an open door.

Mr. MACDONALD. Yes, sir, that was the fact.

Mr. SEELEY. Mr. MacDonald, you mentioned the report of the Federal Trade Commission on the motor-vehicle industry made pursuant to Joint Resolution No. 87, the so-called Withrow resolution?

Mr. MACDONALD. Yes, sir.

Mr. SEELEY. That resolution was approved April 13, 1938, and the report is dated June 5, 1939. Now you had a part in assembling and investigating the matters covered by that resolution?

Mr. MACDONALD. Well, I did. I was assigned by the Commission to act as a legal adviser to the Chief Economist under whose direction the investigation was conducted and the report made, but my time was taken up to a great degree in the trial of the General Motors Parts case and also in rendering assistance in the f. o. b. and the 6 percent advertising matters and other automotive matters, and I did a lot of this work Saturdays and Sundays.

I would come in from the hearings in the field on a sleeper Friday night and read what the economists had on Saturday and Sunday, dictate on Monday, and then highball back on the hearings to be there for the rest of the week.

I was in Washington and did assist in the review, along with many other lawyers from the Commission, of the final report and of the chapters as they were finally assembled.

Mr. SEELEY. Well, at the field level, in the work you did on the investigation pursuant to this joint resolution, would it be correct to say that the facts found which supported the complaints and the orders that were issued by the Commission in the so-called 6 Per Cent case, docket 3001, and the so-called F. O. B. Pricing case, docket 3173, were obtained as a result of the work done under this resolution?

Mr. MACDONALD. No, sir. I made the 6 percent investigation and the f. o. b. investigation as a separate application for complaint, each of them.

The National Automobile Dealers Association, as well as the Independent Motor Vehicle Manufacturers, the small companies, were concerned about the f. o. b. price advertising. The matter was a subject of discussion at the Automobile Manufacturers Association, and all of the manufacturers, both large and small and including General Motors, said that they had drifted into this thing and they would like a way out, but they couldn't very well sit down around the table and agree as to what the price advertising was going to be, so I furnished the catalytic agent for them to rally around, and by sort of voluntary process this type of advertising was dropped.

At that time the Commission required a formal document which was called a stipulation, which all of the companies, except Ford and GM, signed, that they would not reengage in the practice.

Mr. SEELEY. Then those investigations which led up to the orders in the cases I have mentioned were proceeding independently?

Mr. MACDONALD. They were, indeed.

Mr. SEELEY. Of the investigation under the resolution?

Mr. MACDONALD. Yes, sir; they were.

Mr. SEELEY. Now as to this case you referred to as the General Motors Parts case, that is docket 3152, is it not?

Mr. MACDONALD. Yes, sir.

Mr. SEELEY. And the findings which the chairman asked that you supply us with are the official findings and order of the Federal Trade Commission in 34 Federal Trade Commission Reports at page 58?

Mr. MACDONALD. Yes, sir.

Mr. SEELEY. I would like to refer you to some of the findings there and ask you some questions about them.

Mr. MACDONALD. The chairman requested a copy. There is a copy and I have another one here.

Senator O'MAHONEY. Do you want to have that marked?

Mr. SEELEY. Yes, sir; I do.

Senator O'MAHONEY. How shall we mark it? How do you suggest?

Mr. SEELEY. Insert it at that point in his testimony as you indicated.

Senator O'MAHONEY. I indicated first it should go in at the termination of the testimony, or do you want it in the place to which you referred to it?

Mr. SEELEY. I think it ought to be inserted now.

Senator O'MAHONEY. This will be inserted at this point then.

(The matter above referred to is as follows:)

**GENERAL MOTORS CORPORATION AND GENERAL MOTORS
SALES CORPORATION**

**COMPLAINT, FINDINGS, AND MODIFIED ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3 OF AN
ACT OF CONGRESS APPROVED OCT. 15, 1914**

Docket 3152. Complaint, June 15, 1937—Decision, Nov. 12, 1941

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and pursuant to the provisions of an act of Congress entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act, the Federal Trade Commission, on June 15, 1937, issued and subsequently served its complaint in this proceeding upon the respondents, General Motors Corporation, a corporation, and General Motors Sales Corporation, a corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said Federal Trade Commission Act, and also charging them with violation of the provisions of section 3 of said act of Congress entitled, "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes." After the issuance of said complaint and the filing of respondents' answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Everett F. Haycraft, attorney for the Commission, and in opposition to the allegations of the complaint by Albert M. Levert, attorney for the respondents, before John L. Hornor and W. W. Sheppard, trial examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Approximately 30,000 pages of testimony were taken before Trial Examiner John L. Hornor, including approximately 11,000 pages of Commission's case in chief. The remaining 8,000 pages of testimony were taken before Trial Examiner W. W. Sheppard. A report upon the entire evidence was submitted by Trial Examiner W. W. Sheppard without objection of counsel for the respondents. Trial Examiner John L. Hornor did not submit a report upon the evidence taken before him or join in the report upon the evidence submitted by Trial Examiner W. W. Sheppard. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers thereto, testimony and other evidence, report of Trial Examiner W. W. Sheppard upon the evidence, and exceptions filed thereto by counsel for the Commission, briefs in support of the complaint and in opposition thereto, and oral arguments of counsel; and the Commission having duly considered the matter and having given detailed consideration to the testimony and other evidence, as well as the report of Trial Examiner W. W. Sheppard upon the evidence, and exceptions filed thereto, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, General Motors Corporation, is a Delaware corporation, with its general office and place of business in the city of Detroit, State of Michigan, and is now, and for several years last past has been, engaged in the manufacture of automobiles under trade names of "Cadillac," "LaSalle," "Buick," "Oldsmobile," "Pontiac," and "Chevrolet," and replacement parts, accessories, and supplies for said automobiles under the trade names of "Cadillac," "LaSalle," "Buick," "Oldsmobile," "Pontiac," "Chevrolet," and "G. M." which said products have been, since on or about October 23, 1936, sold through and by respondent General Motors Sales Corporation, a Delaware corporation, to dealers located throughout the several States of the United States, and in the District of Columbia, and such products, when so sold, have been, and are now being, transported and shipped from the factories of said respondent General Motors Corporation to said dealers located in States other than the State in which said products have been, and are being manufactured. Said respondent General

Motors Sales Corporation is a wholly owned subsidiary of respondent **General Motors Corporation**.

Respondents maintain, and at all times mentioned herein, have maintained a course of trade in said automobiles, replacement parts, accessories, and supplies in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their said business, respondents are now, and for more than 3 years last past have been, engaged in substantial competition in the sale of automobiles, automobile parts, accessories, and supplies, with other corporations and with persons, firms, and copartnerships engaged in the sale and distribution of similar products in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 3. Prior to October 23, 1936, the respondent **General Motors Corporation** sold its said automobiles, replacement parts, automobile accessories, and supplies manufactured as aforesaid, through and by the following subsidiary corporations, which were operated as divisions of **General Motors Corporation**, namely, **Cadillac Motor Car Co.**, **Buick Motor Co.**, **Olds Motor Works**, **Pontiac Motor Co.**, and **Chevrolet Motor Co.**, and also through its subsidiary, the **General Motors Parts Corporation**, a Delaware corporation, with its principal office and place of business located in the city of Detroit, State of Michigan.

PAR. 4. On or about November 30, 1936, the said **Cadillac Motor Car Co.**, **Buick Motor Co.**, **Olds Motor Works**, **Pontiac Motor Co.**, **Chevrolet Motor Co.**, and **General Motors Parts Corporation** were dissolved and their assets acquired by said respondent **General Motors Corporation**, and the business of selling automobiles, parts, accessories, and supplies theretofore conducted by said corporations was thereafter conducted by said respondent **General Motors Sales Corporation**.

PAR. 5. Respondent **General Motors Corporation**, since November 30, 1936, has conducted its operations through five motorcar divisions, namely, **Chevrolet Motor Division**, **Pontiac Motor Division**, **Olds Motor Works Division**, **Buick Motor Division**, and **Cadillac Motor Car Division**. Said respondent **General Motors Corporation** sells the automobiles, replacement parts, accessories, and supplies manufactured by it in its various divisions to **General Motors Sales Corporation**. Respondent **General Motors Sales Corporation** is also divided into motorcar divisions corresponding to the various manufacturing divisions of respondent **General Motors Corporation**.

PAR. 6. Respondent **General Motors Sales Corporation**, in the sale of automobiles, parts, accessories, and supplies to automobile dealers, maintains its principal or central office in the **General Motors Building**, city of Detroit, State of Michigan, and maintains regional and zone offices throughout the several States of the United States and employs parts and accessories salesmen, who contact dealers handling cars manufactured by the respondent **General Motors Corporation**. In this respect said respondent **General Motors Sales Corporation** operates through separate divisions for each respective make of car sold by it.

PAR. 7. Dealers who are selected by the respondent **General Motors Sales Corporation** are required to meet certain standards, particularly of a financial nature, dependent upon the locality of the dealer and the territory granted. In addition, said respondent maintains a degree of supervision over such dealers, for which purpose a large field organization is maintained. This field organization may be illustrated by the **Chevrolet organization** as of June 30, 1937, which is typical. The general sales manager was at the head of the **Chevrolet Division** of **General Motors Sales Corporation**, and under him were two assistant general sales managers. Under these were 9 regional managers, each of whom was in charge of a region comprising 3 or more States. Under each regional manager were approximately 47 zone managers, each in charge of a zone comprising a part of one or more States. Under each zone manager were field representatives or district managers, each of whom was assigned to a specific territory, usually a county or other small subdivision. These field representatives made frequent calls on dealers, inquired as to business and economic conditions, offered advice and suggestions, made periodic audits, collected data, and, in general, obtained detailed information concerning dealers' business operations. The distribution of parts and accessories in the respective regions above described was supervised by regional parts and accessories managers. Each zone in turn had a parts and accessories manager, who supervised the distribution of parts and accessories to **Chevrolet** dealers located in their respective zones. Working under these zone parts and accessories managers were 146 zone parts and accessories salesmen

contacting the Chevrolet dealers at regular intervals, usually monthly, promoting the sale of parts and accessories to Chevrolet dealers.

PAR. 8. General instructions are issued in the form of bulletins, circulars, and manuals by parts and accessories managers of the respective divisions of the respondent General Motors Sales Corporation to their respective zone officials, and through them and by them to salesmen for the respective divisions, as to the methods and practices to be employed by said salesmen in the sale of said replacement parts, accessories, and supplies sold to the respective dealers located throughout the United States. In addition, oral instructions are given to salesmen by these respective division and zone officials at meetings of said officials and salesmen held from time to time at central, regional, and zone offices.

PAR. 9. One of the most important duties imposed upon the replacement parts and accessories salesmen employed by respondent General Motors Sales Corporation is to see that the respective dealers handle and keep in stock only "genuine" General Motors parts and accessories, which, in practice, means to the dealer, a part or accessory manufactured by or at the instance of General Motors Corporation and sold and distributed by the various divisions of General Motors Sales Corporation. These parts and accessories are identified by either the division trademark, the General Motors trademark, or sealed parts packages bearing General Motors identification. In practice, as indicated by accessory catalogs and accessory order pads, the term "accessory" is used to include all items other than parts, and covers various items which might otherwise be considered as supplies, such as cleaner, polishing cloth, dressing, polish, etc.

PAR. 10. There are several subsidiaries of General Motors Corporation engaged in the manufacture of parts and accessories. Among these are Delco-Remy Corporation, New Departure Manufacturing Company, A. C. Spark Plug Co., Packard Electric Co., Delco Products Corporation, and Delco Appliance Corporation. The parts and accessories manufactured by these several subsidiaries are sold and distributed by the respondent General Motors Sales Corporation to General Motors dealers. In addition, there was organized a wholly owned subsidiary of General Motors Corporation known as United Motors Service, Inc., which is also engaged in the sale and distribution of parts and accessories, manufactured by these various subsidiaries, through and by means of distributors and jobbers located throughout the United States. It is estimated that there are approximately 3,000 jobbers of United Motors Service, Inc., handling either all or part of United Motors Service line. There are certain items of the United Motors Service line, manufactured by subsidiaries of General Motors Corporation, which are not handled by some of the divisions of the General Motors Sales Corporation. As to such items, the dealer is supplied either direct by the United Motors Service, Inc., or permitted to purchase such items from authorized jobbers of United Motors Service, Inc. The United Motors Service, Inc., does not carry the entire line of General Motors parts, but, instead, confines itself chiefly to accessories manufactured by the various subsidiaries of General Motors Corporation. While there is evidence in the record that some dealers have from time to time purchased certain items from jobbers of the United Motors Service, Inc., this practice is not encouraged, and even jobbers of the United Motors Service line have had difficulty in selling parts and accessories to General Motors dealers. Furthermore, objections have been made, from time to time, by replacement parts and accessories salesmen of respondent General Motors Sales Corporation, particularly in the Chevrolet Division, to dealers using and stocking accessories and supplies purchased from authorized United Motors Service dealers for the alleged reason that such items did not constitute "genuine" parts or accessories.

PAR. 11. For the purpose of increasing the sale of parts, the respondent General Motors Sales Corporation induces its dealers to become wholesalers or distributors of "genuine" parts among various garages in the vicinity where the dealer is located. The dealer selects several representative garages, designated as "Selected Independents," who have no car sales agreements with any other automobile manufacturer and who will agree to use only "genuine" parts in the repair of General Motors cars. Such selected independent garages are then issued discount cards entitling them to purchase parts from the dealer at a discount of 2½ percent, and, in addition, such garages are loaned a "Genuine Parts" sign and furnished other service of an informative and advertising nature by the division zone office. The nature of this arrangement and the allowance of this discount to independent dealers appears in Pontiac's District Managers Training Course, in which it is stated as follows:

"Many dealers do not appreciate that Pontiac's net prices on competitive parts are much lower in almost every instance than the jobber's parts. To grant these long discounts Pontiac must insist that dealers purchase all of their parts from Pontiac."

PAR. 12. In order to promote the sale of parts, a distinction has been made between "fast-moving" and "slow-moving" parts. For example, in its "Operating Manual" for the "genuine parts" department for the year 1934, issued by the Chevrolet Motor Co., it was estimated that there were approximately 15,500 parts listed in Chevrolet master parts catalogs, of which only 841 parts, or approximately 6 percent, come within the classification of "fast-moving parts." Since the "fast-moving" parts are the only ones which can be profitably stocked and handled, it is recommended by respondent General Motor Sales Corporation that the dealer stock only such "fast-moving" parts and carry a very limited supply of the "slow-moving" parts. For the purpose of facilitating the stocking and handling of the "fast-moving" parts a "balanced parts stock plan" has been developed, which consists of steel bins and a supply of parts which have been carefully selected by the parts department. The dealer, in addition, carries a monthly parts inventory control record and orders parts each month as his supply is depleted.

PAR. 13. A plan somewhat similar to the balanced parts system is used in connection with accessories, except that the dealer, instead of carrying an inventory control record, follows an accessories projection system, which is operated in the same manner as used by the dealer in ordering new cars, whereby each month the dealer estimates the quantity of accessories he will sell during the next 30 days. Such estimates or projections are usually made with the sales representative and are based upon the estimated quantity of accessories in proportion to the sale of new cars.

PAR. 14. The respondent General Motors Sales Corporation enters into agreements popularly known as "franchises" with automobile dealers handling its respective lines of automobiles, parts, and accessories, which said agreements set forth the terms and conditions under which sales of automobiles, parts, and accessories are made to the respective dealers. Under these agreements or franchises, respondent General Motors Sales Corporation grants to the dealers the right to sell motor vehicles, chassis, parts, and accessories in certain defined territory described in an appendix thereto which is made a part of the franchise or agreement. The dealers accept these franchises and agree to make all sales in accordance therewith.

In the appendix to said franchise agreements (except those with dealers located in the State of Texas) the following clause is set forth with respect to the sale of "genuine new Chevrolet parts":

"Dealer agrees that he will not sell, offer for sale, or use, in the repair of Chevrolet motor vehicles and chassis, secondhand or used parts, or any part or parts not manufactured by or authorized by the Chevrolet Motor Division, General Motors Sales Corporation."

A similar clause likewise appears in the franchise agreements executed by the other divisions of General Motors Sales Corporation, namely, Pontiac, Oldsmobile, and Buick.

PAR. 15. In the appendix to the agreement between respondent General Motors Sales Corporation and their respective dealers located in the State of Texas, a clause differing from that appearing in its usual contracts is set forth with respect to the sale of "genuine new parts," of which the following statement appearing in the contract of the Chevrolet Motor Division is an example:

"Dealer agrees that he will not sell, offer for sale, or use, in the repair of Chevrolet motor vehicles and chassis, as genuine new Chevrolet parts, any part or parts not manufactured by or authorized by the Chevrolet Motor Company."

PAR. 16. The agreements or franchises entered into between General Motors Sales Corporation through its various divisions and its respective dealers contain no date of termination, but provide that the contract can be canceled by the General Motor Sales Corporation by giving three months' written notice and the payment of certain damages to cover loss of rent for the premises. The dealer may cancel the contract by giving one month's written notice of intention to terminate.

PAR. 17. In addition to the clauses above described, the agreements or franchises entered into between respondent General Motors Sales Corporation and its respective dealers contain the following clause with respect to inspection of repair-part stocks of the dealers:

"Seller shall have the right at any reasonable time in business hours to inspect and check over dealer's stock of repair and replacement parts; and if, in seller's judgment, a sufficient quantity of parts for repair and replacement purposes are not then in dealer's stock, dealer hereby agrees to immediately order such parts as may be recommended by seller."

PAR. 18. In the enforcement of the above provisions of the contract with respect to dealers' selling and using only "genuine" parts and with respect to checking dealers' repair and replacement parts, it was customary for representatives of respondent General Motors Sales Corporation to consider the obligation to purchase only "genuine" parts as extending to and covering various accessories sold by said respondent. Such representatives, in soliciting business from dealers and in checking dealers' supplies to determine necessity of purchasing additional items, have led the dealers to believe that under the terms and conditions of the agreement or franchise the dealer was required to purchase accessories, as well as repair and replacement parts, and, as a result, dealers did purchase accessories, as well as parts, because of such belief.

PAR. 19. The distinction between parts and accessories has been somewhat confusing even to the officials of respondents' various divisions. For example, B. M. Smart, a witness called by the respondents, stated that he had been in the employ of General Motors Corporation for approximately 19 or 20 years and was supervisor of parts pricing and compiling of parts sales statistics and determined the parts necessary to be serviced by Chevrolet to give complete service coverage on Chevrolet cars. In his testimony this witness stated:

"We were a long time finding out what we were going to call parts and what we were going to call accessories. We finally licked that by letting one fellow take care of them all. * * * Sorry to say, that was me. I was obliged to put a part number on them. So if it was an accessory I put a number on it, and if it was not an accessory I wouldn't put the number on."

PAR. 20. As new models of cars were developed many items previously considered as accessories became standard equipment, and as such came within the classification of parts. There are, consequently, a large number of so-called parts which have no connection with the mechanical operation of the automobile, many of which were formerly accessories, and became parts solely because of their inclusion in standard equipment. For example, such items as the following appear in parts catalogs issued by the respondent General Motors Sales Corporation: floor mats, rear-view mirrors, ornamental radiator caps, ash receivers, windshield wipers, sunshades, sun visors, arm rests, etc. The following items, considered at one time as accessories, became parts of the Chevrolet car between the years 1925 and 1936: bumpers, wire wheels, thermostats, wind wings, trunks, spring covers, rear-view mirrors, gasoline gauges, safety glass, air cleaners, metal tire covers, sun visors, vacuum windshield wipers, pedal pads, shock absorbers, arm rests, stop lights, heat indicators, tire locks, and ash receivers.

PAR. 21. The sale of parts and accessories is not incidental to the sale of automobiles or the maintaining of the goodwill toward the automobiles manufactured and sold by the respondents, but instead constitutes a substantial portion of the business transacted by the respondents. The Chevrolet Motor Division distributed to its various zone managers and salesmen a manual entitled "Distribution of Automotive Replacement Parts Yesterday and Today," which appears in the record as Commission's Exhibit No. 111. In this manual it was estimated that in 1936 there were ten competitors to one Chevrolet dealer engaged in the sale and distribution of parts and accessories, but that by reason of promotional activities adopted by the Chevrolet Division these competitive odds were overcome, and during the year 1936 the Chevrolet Division was successful in obtaining 38.5 percent of the estimated potential parts business. As stated in this exhibit, "Chevrolet Motor Division has spent more money than any other manufacturer in the industry in the development of service, parts, and accessories sales for Chevrolet dealers."

PAR. 22. With reference to accessories, the above exhibit contains the following statements:

"For example * * *

"Jobbers formerly sold to Automobile Dealers in mixed carload lots * * *.

"*Automobile Bumpers,

"*Motor Meters,

"*Demountable Rims,

"*Locking Steering Wheels,

"*Door and Transmission Locks, and MANY OTHER ITEMS.

"And in recent years * * * CAR DEALERS * * * have concentrated on the sale of other Accessories in order to obtain needed Gross Profits * * *."

"With The Result * * * that the Jobbers quickly lost the bulk of this business * * *. because * * * THEY COULD NOT DEAL IN CUSTOM BUILT ACCESSORIES. FOR EXAMPLE the jobbers never had a chance to get the CAR RADIO BUSINESS."

"The Car Dealers hold this business because most new car accessories are bought by our customers at the time they purchase their new cars from the Dealers."

PAR. 23. Various activities of a promotional nature have been adopted by respondent General Motors Sales Corporation for the purpose of stimulating the sale of parts and accessories, among which are the following, which have been listed in the above exhibit No. 111:

(1) Annual review, inventory, check-up, and training meeting for dealers and their parts managers.

(2) Parts managers training course.

(3) Monthly group meetings.

(4) Independent garagemen's meeting, conducted by Chevrolet dealers and assisted by Chevrolet field personnel.

(5) Parts mart magazine for dealers' parts managers.

(6) Chevrolet dealer's news, featuring training and promotional ideas applying to parts and service activities.

(7) Monthly film service on parts and accessories retail merchandising.

(8) Monthly store arrangement and trim service.

(9) The establishment of 145 parts and accessories representatives to assist dealers in the balancing of their parts and accessories stocks, who are trained to promote parts and accessories retail sales for dealers to move merchandise from their shelves in accordance with agreed monthly programs set up by the zone offices.

(10) Monthly inventory control pads supplied to dealers.

(11) Additional 3 percent discount and free freight on certain parts and accessories monthly orders.

(12) Lot net prices on 388 highly competitive items to meet competition.

(13) Parts packaging program in which 1,500 items are distributed in sales-producing containers.

(14) The establishment of the broadest and most effective parts distributing system in the industry.

(15) Fifteen thousand selected independent garages signed up for wholesale discount and supplied with parts list material, without cost to them.

(16) Independent garage bin at special price.

(17) Parts advertising in national trade magazines.

(18) Government parts contract "provides mandatory purchases of genuine Chevrolet parts".

(19) Radio service.

(20) Modern parts store program designed for the merchandising of parts and accessories.

(21) Accessories display service.

(22) Special merchandise displays, such as individual counter cards, etc.

(23) Cash prizes to members of dealers' organizations for unusual selling records and performance.

PAR. 24. In the course of its dealings with dealers, the respondent General Motors Sales Corporation adopted acts and practices which were designed to, and did, intimidate such dealers, and which coerced and compelled them to purchase parts and accessories solely from the respondent General Motors Sales Corporation and prohibited purchases from outside sources except in cases of emergency when the "genuine" part or accessory was not available in General Motors' warehouse. There are approximately 14,000 General Motors dealerships, exclusive of associate dealers, located throughout the country, the status of each of which is determined by a franchise agreement which is subject to annual renewal and to cancellation on very short notice, without cause. Although every dealer is an independent businessman, the supervision and control exercised by General Motors Sales Corporation over his business operations is almost as complete as if the dealer were an agent in all respects. Every dealer acquires a substantial investment in buildings, cars, parts, and accessories, and builds up goodwill in a community. Consequently, a canceled dealership leaves the respondents with one less retail outlet, which can be readily replaced, but leaves

the disfranchised dealer without a business and burdened with his substantial investment, in the liquidation of which he is likely to sustain a heavy loss.

PAR. 25. Although the original franchise or agreement made with the dealer runs for an indefinite period of time, it is customary to renew such contracts the latter part of each year for the ensuing year. In this connection it is customary for the zone manager to call meetings of the dealers in each of the districts, at which all dealers attend. After a sales talk, usually by the zone manager, the dealers present are required to attend a series of personal interviews with representatives of various departments of General Motors Sales Corporation, such as the parts and accessories departments, with a final interview with the zone manager, at which time the requirements for the coming year are reviewed, as arrived at in interviews with the various departments including the parts and accessories department. The dealer is required to secure the approval of each of these representatives and to agree with the zone manager on the subject of car requirements before the franchise agreement is renewed. Such arrangement carries with it an implied threat of cancellation unless satisfactory arrangements are made with the parts and accessories managers, as well as the zone manager, and, to this extent, a number of dealers have been coerced into the purchase of parts and accessories over and above their requirements because of such implied threat of cancellation of the contract.

PAR. 26. As a further means of coercion and compulsion in order to prevent dealers from purchasing parts and accessories from outside sources, the respondent General Motors Sales Corporation has, in many cases, delivered automobiles equipped with various accessories which were not ordered by the dealer, and has shipped accessories to the dealers, with or without cars without prior order therefor. In addition thereto, it was customary for said respondent to require the dealers to project future requirements in parts and accessories, and in many cases the said respondent thereafter treated such projections as orders and made shipments thereon. The entire plan was so designed as to prevent a dealer from making any purchases from jobbers or other manufacturers and to eliminate all parts and accessories other than those sold and distributed by the respondent General Motors Sales Corporation.

PAR. 27. The following statements which appear in Pontiac's District Managers Training Course are examples of instructions given to district managers by the respondent General Motors Sales Corporation to force the purchase of accessories by dealers:

"Check over the dealer's copy of first two current months dealer shipping specifications against last groups agreed upon last month's projection.

"Then if dealer has failed to specify as agreed upon, try and sell him on stepping up his group orders on the last shipping specifications (due in zone on 5th of current month) to balance his original order with you.

"When dealers fail to order the 'C' and 'W' groups on their specification sheets as agreed upon, car distributors should automatically include these groups on the dealers' specifications, up to the percentage originally agreed upon by the dealer and district manager. (The 'C' and 'W' groups referred to in the above quotation appear previously in said training course as 'Group C, electric clock' and 'Group W, ash receiver, cigar lighter, visor vanity mirror, gear shift ball.')"

PAR. 28. Among the forms of intimidation and coercion used by the respondent General Motors Sales Corporation to compel dealers to buy parts and accessories from said respondent are the monthly parts order plan, the monthly inspection of bins, accessories, and establishments of dealers, and inspection of dealers' stock of repair and replacement parts under terms of the franchise agreement authorizing representative of said respondent to make such inspection and authorizing such representative to require the purchase of additional parts as may be considered necessary, which have enabled the said respondent to coerce dealers into purchasing respondent's parts and accessories and to prohibit purchases from outside sources. The requirement that only "genuine" parts be handled by the dealer and the use of identifying tags and markets permit and enable the representatives of said respondent, when checking the dealers' parts, to object to the presence in dealers' supply room of various materials not furnished and supplied by said respondent.

The real purpose of such inspections and the use of monthly parts order plan is typified by Commission's exhibit 59, which is District Managers Training Course and consists of instruction to district managers on parts and accessories. It contains a program of operation of a plan between district managers and their dealers "in developing the greatest potential volume and profit on parts and

accessories for their dealers and for Pontiac." In this exhibit there appears the following illustration of methods to be used in soliciting the dealers' monthly parts orders and to get the dealers to send in their orders on due dates:

"Checking the dealer's purchases. On each dealer contact, check the last monthly order pad with the present one to see dealer is ordering his parts on 60-day basis. Check his parts bins to see if any outside purchases are being made, and why. Cover outside purchases invoices with parts man and see that future purchases of outside material do not include any parts or accessories supplied by Pontiac."

PAR. 29. In cases where inspections have been made by representatives of the respondent, and parts and accessories other than those supplied by the respondents were found on the dealer's premises, threats have been made, both directly and by implication, that unless the practice on the part of the dealer was discontinued and only parts and accessories supplied by the respondent General Motors Sales Corporation carried in stock, the dealer's contract would be canceled. Such implied threats were further made by the representative or district manager arranging for an interview with the zone manager for the purpose of discussing the dealer's practices, the dealer knowing that the zone manager has the power to recommend the cancellation of his contract. In some cases where a dealer has refused to handle only parts and accessories sold and distributed by the respondent General Motors Sales Corporation, there has been a delay in a shipment of new cars to such dealers. There is also in the record evidence of cancellation of certain contracts after a controversy over the use of parts and accessories has occurred, but which cancellations were ostensibly based upon other grounds.

PAR. 30. The volume of sales of "genuine" Chevrolet parts to Chevrolet dealers by the Chevrolet Division of General Motors Corporation and the Chevrolet Motor Car Co. Division of General Motors Sales Corporation for the years 1929 through 1936 was as follows:

1929-----	\$35, 383, 264	1933-----	\$17, 347, 625
1930-----	31, 114, 662	1934-----	22, 934, 544
1931-----	24, 818, 527	1935-----	26, 089, 779
1932-----	18, 064, 509	1936-----	33, 055, 912

The volume of sales of "genuine" Chevrolet accessories to Chevrolet dealers by the Chevrolet Division of General Motors Corporation and the Chevrolet Motor Car Co. Division of General Motors Sales Corporation for the years 1929 through 1936 was as follows:

1929-----	\$8, 078, 065	1933-----	\$8, 335, 909
1930-----	7, 656, 581	1934-----	10, 289, 902
1931-----	9, 376, 246	1935-----	13, 901, 277
1932-----	6, 171, 463	1936-----	25, 811, 532

PAR. 31. The volume of sales of "genuine" Pontiac parts to Pontiac dealers by the Pontiac Motor Division of General Motors Corporation and the Pontiac Division of General Motors Sales Corporation for the years 1932 through the first 6 months of 1937 was as follows:

1932-----	\$1, 562, 166	1935-----	\$1, 967, 130
1933-----	1, 274, 576	1936-----	2, 882, 983
1934-----	1, 557, 169	1937 (first 6 months)-----	1, 821, 333

The volume of sales of "genuine" Pontiac accessories to Pontiac dealers by the Pontiac Motor Division of General Motors Corporation and the Pontiac Division of General Motors Sales Corporation for the years 1932 through the first 6 months of 1937 was as follows:

1932-----	\$172, 566	1935-----	\$1, 759, 890
1933-----	486, 040	1936-----	3, 511, 087
1934-----	1, 040, 190	1937 (first 6 months)-----	3, 047, 638

PAR. 32. The volume of sales of "genuine" Oldsmobile parts to Oldsmobile dealers by the Olds Motor Works Division of General Motors Corporation and the Oldsmobile Division of General Motors Sales Corporation for the years 1934 through the first 6 months of 1937 was as follows:

1934-----	\$1, 448, 377	1936-----	\$3, 047, 432
1935-----	1, 926, 285	1937 (first 6 months)-----	1, 558, 060

The volume of sales of "genuine" Oldsmobile accessories to Oldsmobile dealers by the Olds Motor Works Division of General Motors Corporation and the Oldsmobile Division of General Motors Sales Corporation for the years 1934 through the first 6 months of 1937 was as follows:

1934-----	\$1, 110, 295	1936-----	\$5, 091, 185
1935-----	3, 358, 106	1937 (first 6 months)-----	3, 919, 724

PAR. 33. The volume of sales of "genuine" Buick parts to Buick dealers by the Buick Motor Co. Division of General Motors Corporation and the Buick Division of General Motors Sales Corporation for the years 1929 through 1936 was as follows:

1929-----	\$7, 912, 855	1933-----	\$3, 346, 279
1930-----	7, 470, 731	1934-----	2, 989, 342
1931-----	6, 860, 228	1935-----	2, 652, 016
1932-----	4, 726, 936	1936-----	3, 130, 968

The volume of sales of "genuine" Buick accessories to Buick dealers by the Buick Motor Co. Division of General Motors Corporation and the Buick Division of General Motors Sales Corporation for the years 1930 through 1936 was as follows:

1930-----	\$4, 141, 034	1934-----	\$1, 081, 643
1931-----	3, 711, 783	1935-----	1, 964, 289
1932-----	1, 781, 103	1936-----	5, 455, 439
1933-----	1, 035, 879		

PAR. 34. One of the classes of competitors to General Motors Sales Corporation in the parts and accessories field is the independent jobber. Prior to 1930 the number of independent jobbers was estimated at approximately 6,000. These jobbers supplied merchandise to independent garages and car dealers and assisted them with technical knowledge and mechanical facilities. They formerly handled supplies, tools, equipment, specialties, accessories, and a fair line of replacement parts. During the depression years competition in the manufacture of automobiles forced car manufacturers to include, as standard equipment, many items which were formerly sold as accessories. As car manufacturers began to include accessories as standard equipment, the independent jobbers had to find ways and means of replacing this lost business and during the depression years 1930-33 substantially increased their sales in tools, service equipment, and replacement parts. In order to do this, many jobbers opened and established a number of branches located near their customers, enabling them to intensify their merchandising activities in concentrated areas and to give better service to their parts customers.

PAR. 35. The independent jobbers sell the products of independent replacement part manufacturers, some of whom manufacture for the car manufacturer, including respondent General Motors Corporation, as follows: Ball bearings, battery cables, brake linings, clutch disks and facings, coils, cylinder-head gaskets, fan belts, head lamps, radio hose, king pin replacement units, lamp bulbs, mufflers, piston rings, piston pins, pistons and piston-pin assemblies, spark plugs, spark plug wire sets, valve springs, and many other items.

PAR. 36. Many of such items which are manufactured by independent manufacturers for General Motors Corporation and used by General Motors Sales Corporation as "genuine" replacement parts are identical in quality and design with those sold by these same manufacturers to independent jobbers, the only difference between such parts and those sold by General Motors as "genuine" parts being the stamp placed on the outside of the package by the manufacturer who packages such parts for General Motors Sales Corporation. Other replacement parts handled by independent jobbers as well as General Motors Sales Corporation which are identical, are A-C spark plugs, Stromberg and Carter carburetors, piston rings, hydraulic brakes, wheels, and the Borg-Warner clutch. There are also many reputable manufacturers who manufacture parts of like quality and design to those parts manufactured by General Motors Corporation or sold by General Motors Sales Corporation.

PAR. 37. Subsequent to 1933 independent jobbers handling replacement parts and accessories for General Motors cars have been unable to sell such merchandise in substantial quantities to General Motors dealers for use on General Motors cars, being told by parts men of such dealers that they are supposed to buy only "genuine" parts and accessories in packages that bear General Motors trademark

and are recommended for General Motors cars. Parts and accessories which independent jobbers have been unable to sell to General Motors dealers for the reasons specified above, are heaters, radios, antifreeze solutions, spark plugs (both A-C and Champion), cylinder-head gaskets, manifold gaskets, brake linings, cigar lighters, brake fluid, pistons, piston rings, valves, bearings, ignition parts, gearshift balls, batteries, ignition cables, spark-plug wires, carburetors, carburetor parts, chemicals and polishes, axles, radiator cleaners, fan belts, clutches, and gears.

PAR. 38. When a General Motors dealer sells a car to a purchaser, there goes with such car a warranty or guaranty by the General Motors Corporation warranting such motor vehicle, including original equipment placed thereon by the manufacturer, except tires, to be free from defects in material or workmanship under normal use and service. The obligation under this warranty is limited to making good at its factory any part or parts within 90 days after delivery of such vehicle to the original purchaser, or before such vehicle has been driven 4,000 miles, whichever event shall first occur. This warranty does not apply to cars which have been repaired or altered outside of an authorized General Motors service station, which, in the judgment of the manufacturer, affects its stability and reliability, or which car has been subjected to misuse, negligence, or accident. The respondents have introduced evidence to the effect that in order to maintain the good will of its various divisions and protect its guaranty it is necessary to maintain supervision over the parts used and sold by its individual dealers. However, all of the parts which come within the restrictive provision of the contract, set out in paragraph 14 hereof, are not necessary to the mechanical operation of the car, and the performance, or lack of performance, of such parts would have no bearing upon either the warranty issued or the good will of the division of General Motors selling a car. Furthermore, there are a large number of parts which are supplied by manufacturers to jobbers which are identical in material and construction with parts furnished by these same manufacturers to General Motors Corporation.

PAR. 39. The number of automobiles manufactured by the respondent General Motors Corporation and sold through its subsidiary, respondent General Motors Sales Corporation, has constituted, and now constitutes, a substantial portion of all the automobiles manufactured and sold in the United States. The General Motors cars in operation constitute approximately 36 percent of all cars and trucks in operation. For the year 1936 there was a total of 25,378,655 cars and trucks in operation in the United States. Of this number, there were 1,129,779 Buicks, 702,671 Oldsmobiles, 1,013,857 Pontiacs, and 6,455,872 Chevrolets, or a total of 9,302,179 General Motors cars, exclusive of Cadillac, in operation in the United States. The total volume of automobile parts and automobile accessories and supplies sold by the respondent General Motors Corporation through its subsidiary respondent General Motors Sales Corporation, has constituted, and now constitutes, a substantial proportion of all the automobile parts and automobile accessories and supplies manufactured and sold in the United States. For example, during the year 1936, the respondent General Motors Sales Corporation sold \$42,117,295 in parts and \$39,869,243 in accessories and supplies, exclusive of parts and accessories sold by the Cadillac Division and exclusive of parts and accessories sold by the United Motor Service, Inc. Such sales constitute a substantial portion of the sales of parts and accessories in the United States, and, when limited to parts and accessories for General Motors automobiles, constitute a substantial portion of the parts and accessories sold and used on General Motors automobiles.

PAR. 40. The use by the respondent General Motors Sales Corporation of the acts and practices hereinabove described, has had, and now has, the capacity and tendency to, and does, intimidate General Motors dealers and coerce and compel them to purchase accessories and supplies only from the respondent General Motors Sales Corporation, with the result that substantial trade has been diverted to the respondents from their competitors who are engaged in the manufacture and in the sale and distribution of automobile accessories and supplies in commerce among and between the various States of the United States and in the District of Columbia, and has deprived, and is now depriving, said competing manufacturers of a market for the sale of said products manufactured and sold by said competing manufacturers, as aforesaid, and has had, and now has, a tendency to unduly hinder competition and to create a monopoly in General Motors Corporation in commerce in automobile accessories and supplies between and among the various States of the United States, and in the District of Columbia.

PAR. 41. The Commission further finds that the use by the respondents of the acts and practices hereinabove described, of selling parts on the condition, agreement, or understanding that the purchaser thereof shall not sell or use parts of a competitor, has had, and now has, the effect of substantially lessening competition; and has had, and now has, a tendency to create a monopoly in replacement parts used on General Motors cars. By means of the provision in the contract that General Motors dealers will not sell, offer for sale, or use, parts not manufactured by or authorized by the General Motors Sales Corporation, practically all dealers in General Motors cars, to the number of approximately 14,000, have been removed as customers and prospective customers of independent manufacturers and jobbers; and there have likewise been removed as customers and prospective customers of such manufacturers and jobbers, all associate dealers and selected independent garages who have agreed to purchase only parts supplied by General Motors dealers, and which garages are estimated as being approximately 15,000 for the Chevrolet Division alone in the year 1936.

PAR. 42. On the completion of the testimony taken in this case, the respondents made a motion before the trial examiner to strike the testimony of certain witnesses. This motion was sustained in part and the testimony of certain witnesses stricken from the record. An appeal from this ruling of the trial examiner was taken by the attorney for the Commission and is now pending before the Commission. The testimony stricken by the trial examiner on this motion is more or less cumulative and not necessary to the decision in this case, and it is, accordingly, not necessary for the Commission to pass upon this motion or consider this testimony in making its findings.

CONCLUSION

The aforesaid acts and practices of the respondents as herein found are all to the prejudice and injury of the public and of said respondents' competitors, and constitute unfair methods of competition within the intent and meaning of the Federal Trade Commission Act; and the acts and practices of the respondents in selling replacement parts on the condition, agreement, or understanding that the purchaser thereof shall not use or deal in replacement parts of a competitor, has the effect of substantially lessening competition and a tendency to create a monopoly in replacement parts used on General Motors cars, and constitutes a violation of section 3 of the act of the Congress of the United States entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton Act.

MODIFIED ORDER TO CEASE AND DESIST¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, testimony and other evidence taken before John L. Hornor and W. W. Sheppard, trial examiners of the Commission theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, report of Trial Examiner W. W. Sheppard upon the evidence and exceptions filed thereto, briefs filed in support of the complaint and in opposition thereto, and oral arguments of counsel; and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act and have violated the provisions of that certain act of the Congress of the United States entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act, and the Commission having issued its order herein to cease and desist on November 12, 1941, and the respondent having filed with the Commission on June 11, 1942, its request for modification of said order:

It is ordered, That the respondents General Motors Corporation, a corporation, and General Motors Sales Corporation, a corporation, and their respective officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of automobile accessories, automobile supplies, and other similar products in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

¹ Order published as modified by Commission on June 25, 1942.

(1) Requiring automobile dealers in connection with contracts or franchises or selling agreements with said automobile dealers for the sale of new motor vehicles, by means of intimidation or coercion, to purchase or deal in accessories or supplies sold and distributed by the respondents, or by any one designated by them, for use in and on automobiles sold by the respondents.

(2) Canceling, or directly or by implication threatening the cancellation of, any contract or franchise or selling agreement with automobile retail dealers for the sale of new motor vehicles, because of the failure or refusal of such dealers to purchase or deal in accessories or supplies for use in and on automobiles manufactured or sold by the respondents, sold and distributed by the respondents, or by any one designated by the respondents.

(3) Canceling, or directly or by implication threatening the cancellation of, any contract or franchise or selling agreement with automobile retail dealers for the sale of new motor vehicles, for purchasing or dealing in accessories or supplies for use in and on automobiles sold by the respondents, not obtained from respondents or from other sources designated by the respondents.

(4) Shipping accessories or supplies for use in and on automobiles sold by the respondents without prior orders therefor, or canceling, or directly or by implication threatening the cancellation of any automobile retail dealer contract or franchise or selling agreement for the sale of new motor vehicles, because of a failure or refusal to accept accessories or supplies for use in and on automobiles sold by the respondents shipped without prior order.

(5) Refusing or threatening to refuse, to deliver automobiles to automobile retail dealers in connection with contracts or franchises with said automobile retail dealers for the sale of new motor vehicles because of a failure or refusal of such dealers to purchase or deal in accessories or supplies for use in and on automobiles sold and distributed by the respondents or by any one designated by them.

(6) The use of any system or practice, plan, or method of doing business, for the purpose, or having the effect, of coercing or intimidating automobile retail dealers who have contracts or selling agreements or franchises of the respondents for the sale of new motor vehicles into purchasing or dealing in accessories or supplies manufactured or supplied by the respondents, or by any one designated by them for use in and on automobiles sold by the respondents.

It is further ordered, That the respondents, General Motors Corporation, a corporation, and General Motors Sales Corporation, a corporation, and their respective officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with any franchise or agreement for the sale of automobiles or in connection with the sale, or making of any contract for the sale of, automobile parts in commerce as "commerce" is defined in that act of Congress entitled, *An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,* approved October 15, 1914, commonly known as the Clayton Act, do forthwith cease and desist from:

Entering into, enforcing, or continuing in operation or effect, any franchise or agreement for the sale of automobiles, or any contract for the sale of, or selling, automobile parts in connection with contracts or franchises or selling agreements with automobile retail dealers for the sale of new automobiles on the condition, agreement, or understanding that the purchasers thereof shall not use or sell automobile parts other than those acquired from the respondents, unless such condition, agreement, or understanding be limited to automobile parts necessary to the mechanical operation of an automobile, and which are not available, in like quality and design, from other sources of supply.

It is further ordered, That the respondents shall, within 30 days after this modified order becomes final, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this modified order.

Mr. SEELEY. Mr. MacDonald, on page 8 of your statement you summarize the more important points in the order and as set forth there it falls into two parts.

Now, as to the portion of the order entered under section 5 of the Federal Trade Commission Act, do the prohibitions of the order apply there to parts or only to accessories and supplies?

Mr. MACDONALD. Accessories and supplies and similar products.

Mr. SEELEY. And as to the prohibitions in the latter part of the order which are entered under section 3 of the Clayton Act, as amended, do the prohibitions there apply to both parts and accessories?

Mr. MACDONALD. They are under parts.

Mr. SEELEY. Parts only. And referring you to paragraph 9 and also paragraphs 18 to 20 of the findings which deal with the distinction between parts and accessories, can you tell us whether you had any difficulty with respect to differentiating between parts and accessories, and if so, what was that difficulty?

Mr. MACDONALD. Well, we had difficulty and I think the dealers had difficulty. There is a statement recorded in the findings that the corporation itself had difficulty in deciding which were parts and which were accessories, and it was a changing thing. It was not stable but it changed from time to time.

At one time you bought a motor vehicle which today we would consider as a skeleton, and as time went on what was considered to be a luxury element such as a windshield and bumpers became standard equipment.

They failed to include them in the price of the car, the industry did, not General Motors specifically, and then we took that action back there in the late thirties with the help of the industry to clarify that situation, so that as the luxury items became essentials and standard equipment, they moved from the field of accessories into the field of parts.

Mr. SEELEY. By "essentials" do you mean integral operating parts of the car?

Mr. MACDONALD. Yes, sir.

Mr. SEELEY. You used the word in your statement "forcing." What do you mean? Can you give us some description of what is meant by "forcing" or "full-line forcing," Mr. MacDonald?

Mr. MACDONALD. Well, that is the tying in of the sale of heaters, of radios, of floormats and polish and light bulbs and hub caps and spark plugs and batteries and cable and a variety of other items which are manufactured in many instances by highly reputable companies who are suppliers to General Motors of these same items, with the sale of the vehicle by General Motors, to the end that the dealer understands that he is required to buy all of these items from the Chevrolet or the Pontiac or Olds division, as the case may be, in order to continue to enjoy the privilege of buying and selling their new cars.

It is a forcing of the full line of products which the corporation has to sell to the dealer, and a tying in of the lesser item with the major item, a practice which has been condemned repeatedly by the courts.

Mr. SEELEY. Take an item such as windshields, Mr. MacDonald; at the time that was considered a part already; was it not?

Mr. MACDONALD. Yes, sir; although in bygone days it was an accessory. Sissies had to have windshields.

Mr. SEELEY. Suppose a case where an owner orders a windshield, let us say for a Chevrolet automobile. Then he cancels the order from the repairman because he says he was told that he must purchase it at a General Motors garage and must obtain an estimate from such a

dealer before he can collect the insurance: would that situation be covered under this order as it stands?

Mr. MACDONALD. I don't understand the question.

Mr. SEELEY. Suppose the windshield is a replacement, it is ordered to replace a broken windshield, would the prohibitions of the order here cover that?

Mr. MACDONALD. Well, certainly. The order prohibits the dealer from being restrained from buying a part of like grade and quality from outside the GM family, and windshields, now that they are curved in this country, are controlled by two companies, Pittsburgh Plate Glass and Libby-Owens-Ford, and those windshields, the identical product, is available through a glass jobber or dealer or through the Chevrolet or Oldsmobile division.

When I said Pittsburgh, they supply Ford, they do not supply General Motors.

Mr. SEELEY. Now as to this term which has been used here in the order and is quoted in your statement, "genuine General Motors parts," Mr. MacDonald, what was meant by that? Have you any definition there from the briefs or the record in that case?

Mr. MACDONALD. It is a part that is manufactured and sold by General Motors or by some manufacturer authorized by General Motors or by some manufacturer authorized by General Motors to make the part, subject to its approval.

Mr. SEELEY. With respect to the parts which were involved at the time in this case, did you find any evidence of an attempt to test technically and factually any of these automotive parts referred to as genuine General Motors parts or to make a technical and factual comparison with the competitive replacement parts?

Mr. MACDONALD. By who?

Mr. SEELEY. By General Motors.

Mr. MACDONALD. Well, in their testimony they contended that certain parts which dealers had testified that they had been told not to handle were parts of inferior quality, and they asserted that they had made tests.

We found and introduced contrary testimony, that some of those parts that were condemned by their witnesses were made by approved sources, by sources who made them for the corporation. There were all kinds. Sometimes they may have been of poor quality.

Mr. SEELEY. In other words, the same parts or the identical parts at times would be described as genuine parts if sold by a General Motors dealer, but not genuine parts if sold by someone else?

Mr. MACDONALD. Correct, even to the point of their own products.

Mr. SEELEY. Do you mean by that, Mr. MacDonald, that even in the case of parts manufactured by the General Motors car divisions, that for purposes of these restraints upon the dealers, such parts would not be considered genuine unless purchased directly from General Motors?

Mr. MACDONALD. The dealers testified that they were told that they must not buy outside, and I quoted from that testimony, buying outside even though they might be A-C plugs produced by the A-C division of General Motors Corp. and sold by them for resale through their United Motors jobbers.

I don't recall this specifically, but I seem to remember a witness testifying that he was told by a Chevrolet parts man, if it doesn't have

the blue Chevrolet band around it, it is not genuine, whether it comes from A-C or somebody else.

Senator O'MAHONEY. Are you referring now to the case mentioned on page 10 of your statement, docket 5620?

Mr. MACDONALD. Yes, sir, I was.

Senator O'MAHONEY. This is the docket in which the Federal Trade Commission issued a cease-and-desist order in 1953.

Mr. MACDONALD. Not in 1953.

Senator O'MAHONEY. Well, my question—in order to clarify this, look on page 10.

Mr. MACDONALD. Oh, you are speaking of the A-C spark plug case?

Senator O'MAHONEY. That's right, that is what I want to know, if you are now talking about that case.

Mr. MACDONALD. No, sir; I was talking about 3152, the dealer parts case.

Senator O'MAHONEY. The original case?

Mr. MACDONALD. Yes, sir, the original case.

Senator O'MAHONEY. The decision in which was handed down in November of 1941.

Mr. MACDONALD. Yes, sir.

Senator O'MAHONEY. In your statement, you give the date November 15, 1941. The document itself gives the decision November 12, 1941.

Mr. MACDONALD. Well, there may be an error, sir.

Senator O'MAHONEY. The printed document is the correct one.

Mr. MACDONALD. Yes, sir.

Senator O'MAHONEY. With respect to docket No. 5620, was the same sort of violation alleged and covered by the cease-and-desist order?

Mr. MACDONALD. That was a different proposition, although the same section of the statute was involved in part of the proceeding.

The United Motors jobbers, that is, independent jobbers who might buy from Bendix, from Borg-Warner, from Motorola, from a variety of sources, also purchased parts from the United Motors division of General Motors Corp., and they had those parts for sale to Chevrolet or Oldsmobile or Pontiac dealers or independent garages or Ford agencies or whatever, and those independent jobbers were required to deal exclusively in A-C products to the exclusion of products manufactured by other spark-plug companies or other filter manufacturers and the other allied products, if they were to earn their distributor discount. Otherwise they would drop back into a lower price classification, and section 3 of the Clayton Act specifically inhibits exclusive dealings where price is a factor.

Senator O'MAHONEY. This is what you seem to be telling the committee. General Motors, through one of its appropriate divisions, manufactures parts. It sells those parts to independent dealers, their GM parts, and these are to be found on the shelf of the independent jobber.

Mr. MACDONALD. Yes, sir.

Senator O'MAHONEY. In the local community.

Mr. MACDONALD. Yes, sir.

Senator O'MAHONEY. It also sends those parts to the division handling the particular motors?

Mr. MACDONALD. That's right.

Senator O'MAHONEY. Chevrolet, Buick, Olds, Pontiac, and the like?
Mr. MACDONALD. Yes, sir.

Senator O'MAHONEY. But the dealer who distributes these cars was under obligation from General Motors not to buy replacement parts from the local jobber in his own town?

Mr. MACDONALD. That is correct.

Senator O'MAHONEY. Is that correct?

Mr. MACDONALD. That was the testimony.

Senator O'MAHONEY. So that General Motors, having sold a set of parts to an independent jobber and presumably having obtained compensation therefor, nevertheless placed such an order, a directive on the local dealer in a particular automobile, that he could not buy those same genuine parts from the local jobber in his own town?

Mr. MACDONALD. There was testimony to that effect; yes, sir.

Senator O'MAHONEY. What did the Commission find?

Mr. MACDONALD. There is a finding to that effect.

Senator O'MAHONEY. There is a finding to that effect. And is that the case from which the General Motors, after having filed notice of appeal, finally withdrew the appeal?

Mr. MACDONALD. Yes, sir, it is.

Senator O'MAHONEY. So that General Motors acknowledged in effect, by not appealing, that that was its practice?

Mr. MACDONALD. Well, they strongly denied that that was the practice, in the testimony.

Senator O'MAHONEY. But they accepted the decree and they would not appeal from it; is that not the fact?

Mr. MACDONALD. They failed to appeal; yes, sir.

Senator O'MAHONEY. Then, following that, according to your testimony, complaints continued to come in from dealers. I read from page 9 of your statement:

From time to time scattered complaints have been received from automobile parts jobbers and from associations of automobile-parts jobbers that General Motors was violating this order.

When were those complaints coming in?

Mr. MACDONALD. They came in while I was working on the spark-plug case in 1947, 1948—about 1946.

Senator O'MAHONEY. They came in 6 years after the decision—

Mr. MACDONALD. After the war.

Senator O'MAHONEY (continuing). After the decision in docket 3152 of November 12, 1941, was handed down, the one that contained these—

Mr. MACDONALD. That is right.

Senator O'MAHONEY. Is that right?

Mr. MACDONALD. Yes, sir.

You appreciate the war intervened there. There was almost a status quo during the wartime period.

Senator O'MAHONEY. Yes.

Mr. MACDONALD. In fact, dealers were encouraged during the war-time period to get parts from independent jobbers, were urged to get them from them because the jobbers were there to serve them and had the reserve parts.

But as soon as the corporation developed a ready reserve of parts, then the jobbers were persona non grata, and the urging was that "You now confine your parts purchases to your car-factory channel."

Senator O'MAHONEY. Now, the picture you have drawn which eventuated in a finding by the Federal Trade Commission and an order to abandon the practice was that General Motors wanted to sell parts, not only to its car dealers but also to independent jobbers, and, at the same time, put up a barricade between the local dealers and the local jobbers so as to prevent the jobbers from selling to the dealers the very same parts.

Mr. MACDONALD. That was the testimony, and there are some documents that will support that.

Senator O'MAHONEY. Well, General Motors did not appeal from the order.

Now, going back to page 9, you say:

"These charges have been investigated." These are new charges filed long after the cease and desist order of November 1941?

Mr. MACDONALD. Yes, sir.

Senator O'MAHONEY. And they involve the same practices?

Mr. MACDONALD. Yes, sir; to a greater or lesser degree; there were varying charges.

Senator O'MAHONEY. Oh, yes; it is a big business.

Mr. MACDONALD. Yes, sir.

Senator O'MAHONEY. The matter was regarded so seriously by the Federal Trade Commission that a full-scale compliance investigation, to use your words, has been conducted during which the record of the General Motors Corp. and various of its regional offices have been examined, and a large number of dealers and ex-dealers have been interviewed by representatives of each of the Commission's seven branch offices.

Mr. MACDONALD. Yes, sir.

Senator O'MAHONEY. That is your testimony. This was a compliance investigation—

Mr. MACDONALD. Yes, sir.

Senator O'MAHONEY (continuing). To see whether or not General Motors was complying with this order which had been issued legally, and from which it had not appealed.

Mr. MACDONALD. Yes, sir.

Senator O'MAHONEY. And then you testify that the results of this investigation are now being reviewed by the Assistant General Counsel in charge of compliance who is preparing a report for the Commission.

Mr. MACDONALD. That is right.

Senator O'MAHONEY. So that the matter now is still before the Commission?

Mr. MACDONALD. That is correct, sir.

Senator O'MAHONEY. Naturally, you have not told us what is in that report, I suppose, but this is the fact: that presently the Federal Trade Commission, having gone to great lengths to carry on this compliance investigation, is now having a report on allegations of violation of the Federal Trade Commission order of 1941 with respect to parts.

Mr. MACDONALD. Yes, sir; such a report is under consideration.

Mr. SEELEY. Mr. MacDonald, you obtained the papers and documents at the time of the investigation in this case, did you not, and some of which were used in evidence in the trial of the case?

Mr. MACDONALD. From various sources documents were obtained, including General Motors.

Mr. SEELEY. Did those documents include franchises, so-called franchise agreements, between General Motors and its dealers?

Mr. MACDONALD. That is my recollection.

Mr. SEELEY. And the record contains representative copies of those franchises which were in use at that time?

Mr. MACDONALD. They do, voluntarily furnish by GM and also by some of the dealers.

Mr. SEELEY. Mr. Chairman, I think it would be helpful to the staff if we could have the Commission furnish copies of those franchises for comparison with the franchises which are now in use.

Senator O'MAHONEY. We will make that request of you, Mr. MacDonald.

Mr. MACDONALD. That will be furnished.

Mr. SEELEY. One thing more, Mr. MacDonald, on the question of the genuine, so-called genuine, General Motors parts: Do you have the copy of the General Motors' brief there?

Mr. MACDONALD. Yes; I apparently do.

Mr. SEELEY. Is the phrase "genuine General Motors parts" defined there?

Mr. MACDONALD. Yes, sir. On page 18 of the printed brief, entitled "Brief for the Respondents," docket 3152—

Mr. SEELEY. How is it defined?

Mr. MACDONALD. "'Genuine parts' means parts manufactured by the four divisions of GMSC or parts approved by the engineering department after inspection and tests."

Mr. SEELEY. Is the requirement of the use of genuine parts related to any other policy of the company?

Mr. MACDONALD. Well, it is related to the warranty policy.

Mr. SEELEY. How was it related in the respondents' brief?

Mr. MACDONALD. Well, in the respondents' brief at page 22 of the same document—

Mr. SEELEY. Yes.

Mr. MACDONALD (continuing):

Warranty policy and service policy—relation to genuine parts. Dealers of GMSC are the only ones authorized to give to purchasers the warranty on each car sold by them. Dealers are obligated to execute the warranty. Its terms and application in practice are set out (pars. 13, 20, et seq. of the examiner's report). The warranty embraces motor vehicles, chassis, parts or accessories as is set forth in paragraph 23 of the selling agreement.

Mr. SEELEY. Just describe for us briefly, Mr. MacDonald, some of the types or as many examples as you can, of the types of products which were covered by this practice used at that time by General Motors requiring its dealers to take parts, to buy exclusively from General Motors.

Mr. MACDONALD. I am having to search my memory deeply; that is a long question.

Senator O'MAHONEY. It is a long time back.

Mr. MACDONALD. Heaters, radios were two of the foremost items at that time in the accessory line that were the subject of complaint.

Some of the items complained of have since departed. Radiator caps, gear shift lever balls, the ornamental balls that are on top of the gear shift lever; polish, antifreeze was one of the subjects about which there was considerable controversy from time to time, the public having quite a wide acceptance for certain advertised brands, and

preferring to buy them by name, and dealers having difficulty in stocking those items.

There was testimony by du Pont on behalf of the Commission that the items which they had for sale to the jobbers were the same as the items which they sold to the corporation.

Mr. SEELEY. Those items, for the most part, were obtainable from outside independent manufacturers and jobbers, were they not?

Mr. MACDONALD. Yes, indeed.

Mr. SEELEY. And that gave rise to the problem?

Mr. MACDONALD. Yes, sir; with some public preference perhaps for the independent's products.

Mr. SEELEY. In addition, were there certain items manufactured exclusively by the General Motors car divisions? Were there certain items manufactured exclusively which were not obtainable from outside sources?

Mr. MACDONALD. Yes, sir.

Mr. SEELEY. For example, would your answer include universal joints, connecting rods?

Mr. MACDONALD. I do not know whether the corporation makes or did make its own rods or its own universal joints. I do recall in the recent, the most recent, investigation in 1952 and 1953 that Spicer and various other universal, various other companies, supplied high-grade parts to the factory of the type you indicated. My recollection is not sufficiently sure to make a statement.

Mr. SEELEY. Did your investigation at that time disclose any complaints concerning the forcing of unordered automobiles?

Mr. MACDONALD. Yes; there have been complaints of that nature, and also the inability to get automobiles when the dealers wanted them or of the kind and type which they desired.

Senator O'MAHONEY. Mr. MacDonald, this might be an appropriate time for me to call attention to the bad printing in this document of docket 3152. I am particularly distressed about the paragraph on page 84, indeed, the whole page; it looks as though in the Government Printing Office or somewhere the plate had been struck with a mallet or something because many of the words are not legible.

Would you be good enough to read into the record the paragraph entitled "Conclusion" so there will be no doubt of just what that conclusion was.

Mr. MACDONALD. I have a better copy which I will substitute, sir.

Conclusion: The aforesaid acts and practices of the respondents as herein found, are all to the prejudice and injury of the public and of said respondents' competitors, and constitute unfair methods of competition within the intent and meaning of the Federal Trade Commission Act; and the acts and practices of the respondents in selling replacement parts on the condition, agreement, or understanding that the purchaser thereof shall not use or deal in replacement parts of a competitor, has the effect of substantially lessening competition and a tendency to create a monopoly in replacement parts used on General Motors cars, and constitutes a violation of section 3 of the act of the Congress of the United States entitled "An Act To Supplement Existing Laws Against Unlawful Restraints and Monopolies, and for Other Purposes," commonly known as the Clayton Act.

May I substitute this for that?

Senator O'MAHONEY. Yes; thank you very much. We will take the substitute.

Mr. SEELEY. Mr. MacDonald, you mentioned in your prepared statement the so-called 6-percent case, docket 3001. Do you recognize this as a true copy of the findings and the order of the Commission in that case?

Mr. MACDONALD. It is; and attached to it is a copy of the decision by the court of appeals.

Senator O'MAHONEY. Read the title of that, won't you, Mr. Attorney?

Mr. SEELEY. The title of this case is—

Senator O'MAHONEY. So that the record will make sure you are talking about it.

Mr. SEELEY. In the matter of General Motors Corp., et al., docket No. 3001. The decision was issued on December 8, 1939.

Senator O'MAHONEY. That is the document you are talking about?

Mr. MACDONALD. It is, sir.

Mr. SEELEY. Will you tell us briefly, Mr. MacDonald, what the connection was between this practice of misrepresenting and advertising the true rate of interest and the activity of the General Motors Acceptance Corp. How was this practice carried out as between the two companies?

Mr. MACDONALD. Well, they worked hand in hand in the field, and I assume also very closely at their headquarters.

The advertising may have been prepared by the finance company, I do not recall precisely. Certainly it had its approval, and it was disseminated by the car factory divisions to dealers and others in connection with motor-vehicle advertising, as well as being also disseminated by the GMAC division, I believe, in strictly finance-plan advertising.

It consisted of a large figure 6 that you could not see any qualification on on a billboard or even otherwise unless you read very closely in magazine advertising, "6" with the percent sign.

Senator O'MAHONEY. Was it designated as the 6-percent finance plan?

Mr. MACDONALD. Yes, sir.

Senator O'MAHONEY. Did those words appear in the ads?

Mr. MACDONALD. Yes, sir. The word "interest" did not appear, and General Motors contended that what they were trying to do was to make their advertising clear so that the public would understand what the rate of finance charge was.

But our inquiry demonstrated that many citizens were buying cars financed by General Motors finance plan with the thought that they were no longer paying what had come to be recognized as a rather exorbitant or if not exorbitant, at least, high finance-charge rate.

Now, the other car factories and the other finance companies followed General Motors very shortly, and the entire industry was using that type of plan when the investigation got underway.

Senator O'MAHONEY. Well, you say in your statement—
in fact, the interest amounted to about 12 percent.

Mr. MACDONALD. Yes, sir.

Senator O'MAHONEY. In order to make that clear on the record, will you please tell us what the 6 percent seemed to signify and what the facts are of which you found 12 percent interest was actually paid.

Mr. MACDONALD. Well, I do not have to wander further than myself, sir. I bought a vehicle under the 6 percent plan from another finance company advertised by almost the same advertising claims, from a dealer who was my client in Madison, Wis.

I had never bought anything on time. I always paid cash. I told the client, "Tell me how much it is and I will go up to the bank and draw some money out of the savings account," and he said, "Well, that won't be necessary. You can now borrow or buy on time at only 6 percent interest."

I said, "Well, my understanding is that those finance charges run much more steep than that."

He said, "No, it is a new plan that the various companies are backing," and that was a Chrysler product, with Commercial Credit Co. finance paper.

So I bought the car on time. I have not made another purchase like that since, and when I got back to my office and got to figuring it up, I discovered instead of being 6 percent interest, which I would have been willing to pay, I was, in fact, paying about 12 percent, a little higher, and I returned to Chicago in considerable mortification on my lack of astuteness in relying upon my client instead of doing the computing before I signed; and these files were on my desk when I got back there, so I was really in a very enthusiastic frame of mind about conducting an investigation.

Senator O'MAHONEY. Well, of course, in connection with your client, I hope you had not submitted your bill before you found out what had been done.

Mr. MACDONALD. Unfortunately he was an excellent; I was working for the Commission at the time.

Senator O'MAHONEY. Proceed.

Mr. SEELEY. In your investigation, Mr. MacDonald, did you—

Mr. MACDONALD. I might also add, if you please, that I was told by a president of one of Chicago's leading banks that he made the same mistake, so I did not feel so upset about it.

Senator O'MAHONEY. That is why it is necessary for the Federal Trade Commission to closely observe the nature of advertising and to read the small print which purchasers so frequently overlook.

Mr. MACDONALD. Yes, sir. That is the fact.

Mr. SEELEY. In your investigation, in your study, of franchises which were put in evidence in this case, did you ascertain whether the dealers defrayed the expense or portion of the expense of the advertising which you have just described for us?

Mr. MACDONALD. They make a contribution to the advertising fund which is administered by an advertising agency, one time selected by the various motorcar companies; I do not know what the present practice is.

Mr. SEELEY. You mean that the agency selected for that purpose was selected jointly by the automobile manufacturers in the industry?

Mr. MACDONALD. Not by the various manufacturers. It was pretty much a standard practice in the trade to collect an advertising contribution by GM, also by Ford and by Chrysler, and those contributions went into a common kitty, and national or local advertising was placed by an advertising agency that was thought to be beneficial toward the sale of the Chevrolet car or the Dodge car, as the case may

be. That copy would probably be prepared in Detroit or elsewhere, and run locally, and sometimes in national magazine advertising.

Mr. SEELEY. Were there any complaints at this time from dealers concerning this requirement of contributing to the advertising kitty that you describe?

Mr. MACDONALD. Oh, yes; yes, sir; there were.

Mr. SEELEY. The chairman mentioned a moment ago about the importance of looking at the fine print. In this other case which you have described for us in your prepared statement, docket 3173, the case dealing with representations in advertising the price of new cars, will you describe those facts and the situation that gave rise to that case for us, Mr. MacDonald? How far back did the investigation go in that case?

Mr. MACDONALD. I think our findings said that it became quite general in 1935. That was about the time when, although it could have been 2 or 3 years previous and, perhaps, even longer than that, I could not be too sure about it, but it was extremely prevalent in 1935, most of the motorcar companies would picture a sedan, four-door sedan, with full equipment insofar as you could see it, and sometimes in the advertisements the doors would be open and you would be able to see the equipment inside, and the dash, which would make full equipment, but they would quote the price not of that sedan as pictured, but of the cheapest coupe that they had, and then not include in it bumpers, spare tire, handling charges, and a variety of other standard items of equipment.

The independent manufacturers were quite concerned about that, and had sought to obtain a correction of it. They were very cooperative and they testified as Commission witnesses in the matter.

As a matter of fact, however, it was of concern to GM and to Ford and to Chrysler. It was a snowball that got rolling, and they did not know how to stop it, and we stepped in, and with the aid of counsel and officers of General Motors and the other companies, Ford, Chrysler, we succeeded in abating the practice, and they voluntarily discontinued, prior to the Commission action, all of them, including General Motors, voluntarily discontinued the practice, and had given some contemplation to asking us to adopt a set of fair-trade rules for their industry to enable them to regulate the advertising.

That was taken up, I was told, by an official of the Automobile Manufacturers Association in the association's meeting. They concluded that it would be handled without the formality of a set of rules.

Mr. SEELEY. In investigating that case, did you obtain any information as to how the manufacturer arrived at the price which he set for his cars at that time? In other words—

Mr. MACDONALD. I assume I did, but I certainly do not have the vaguest recollection of it at this time.

Mr. SEELEY. Were the individual dealers free to sell at any price they desired at that time?

Mr. MACDONALD. Oh, a suggested resale price was made, the advertised price, but I do not recall when any car factory ever persuaded or sought to persuade a dealer to get the advertised price. They want the dealers to sell cars, sell them at any price and, of course, price is an uncertain factor inasmuch as usually in the majority of cases I think I would say safely that we all have a used car to trade

in, and the price of the new car may vary by the amount of allowance or overallowance that is granted on the used car.

Senator O'MAHONEY. Any further questions, Mr. Burns, of this witness?

Mr. BURNS. That is all we have, Senator.

Senator O'MAHONEY. Thank you very much, Mr. MacDonald; you may be excused.

Mr. MACDONALD. Thank you, sir.

Senator O'MAHONEY. It is now 5 minutes of 12, Mr. Burns. What is your program?

Mr. BURNS. We have another witness who is here, if you wish to continue.

Senator O'MAHONEY. How long will it take?

Mr. BURNS. He has a 15-page statement which usually takes about a half hour to read; perhaps a half hour of questioning.

Senator O'MAHONEY. Perhaps it might be well for us to change our program and adjourn at 12 o'clock, recess at 12 o'clock today, and take it up at 1:30, and devote the afternoon to this witness.

Mr. BURNS. Whatever you wish.

Senator O'MAHONEY. There being no objection, that will be the case; the committee will recess until 1:30.

(Whereupon, at 12 o'clock noon, the subcommittee recessed, to reconvene at 1:30 p. m., the same day.)

AFTERNOON SESSION

Senator O'MAHONEY. Mr. McHugh, are you ready to proceed?

Mr. McHUGH. Yes, Senator.

Senator O'MAHONEY. Very well, sir.

Mr. McHUGH. The witness is James Cassedy, attorney, who is representing Equipment Wholesalers Association.

Senator O'MAHONEY. Mr. Cassedy, we are very glad to have you here, sir.

Mr. CASSEDDY. Thank you, sir.

Mr. McHUGH. Mr. Cassedy, if you have a prepared statement, you can deliver it if you wish.

STATEMENT OF JAMES W. CASSEDDY, GENERAL COUNSEL, MOTOR & EQUIPMENT WHOLESALERS ASSOCIATION

Mr. CASSEDDY. Thank you, Mr. McHugh.

Mr. Chairman and members of the committee, I am James W. Cassedy, an attorney of Washington, D. C. With your permission I desire to present the joint statement of B. W. Ruark, general manager of the Motor & Equipment Wholesalers Association and myself as general counsel of that association. We shall endeavor to give a factual report, based entirely upon information supplied by the members of our association, relative to the automotive service industry.

Senator O'MAHONEY. Will you please describe the association? Apparently you undertake to do that in the next paragraph, but I think it needs a little more detail.

Mr. CASSEDDY. Yes, Senator; to some extent we have in this prepared statement.

* The Motor & Equipment Wholesalers Association, with headquarters in Chicago, Ill., is an international trade organization of independent automotive wholesalers that have approximately 3,500 wholesale trade outlets throughout the United States and Canada.

The term "independent" is used to contrast these wholesalers with distributors and dealers connected with nationally integrated organizations such as are maintained by the automobile manufacturers, major oil companies, tire companies, chainstores, and others that are engaged in the distribution of similar automotive merchandise.

Senator O'MAHONEY. When was your organization formed?

Mr. CASSEDY. This organization has been in existence for possibly 25 years as the Motor & Equipment Wholesalers Association, I believe.

Mr. Ruark has been the manager of that association for about 23 years, I am told.

Mr. McHUGH. Mr. Cassedy, excuse me; do I understand from this that your membership does not consist of jobbers who are associated with the integrated car manufacturers?

Mr. CASSEDY. There are some members of Motor & Equipment Wholesalers Association who handle United Motors Service parts, or A-C parts distributed from the General Motors organization, if that is what you mean.

Mr. McHUGH. These would be jobbers who purchase from United Motors Service or A-C Spark Plug?

Mr. CASSEDY. That's correct.

Senator O'MAHONEY. What is United Motors Service?

Mr. CASSEDY. United Motors Service is one of the divisions of General Motors that has handled replacement parts, to describe it generally, through independent wholesalers and jobbers.

Mr. McHUGH. Will you describe for the record, if you will, Mr. Cassedy, just what types of automotive parts United Motors Service handles.

Mr. CASSEDY. Mr. McHugh, the United Motors Service division of General Motors Co., as I point out later in this prepared statement, after January 1, 1954, began handling all General Motors lines without restrictions, so that they handle all replacement parts made by General Motors and a great many purchased by General Motors for resale in the replacement market.

Mr. McHUGH. So that United Motors Service is the distributor for General Motors on all parts and supplies manufactured by any of the General Motors divisions in the replacement market?

Mr. CASSEDY. There were restrictions up until the first of the year in the handling of certain parts called the hard parts, body parts which General Motors made and distributed only through their car dealer outlets.

Mr. McHUGH. That is in the replacement market?

Mr. CASSEDY. Yes.

Mr. McHUGH. That was at that time handled through United Motor Service?

Mr. CASSEDY. No, sir; as I remember it, some of those restrictions were removed at the beginning of last year, and if I am not mistaken, all of them, all restrictions have been removed now.

Mr. McHUGH. In addition to United Motor Service selling the parts and supplies equipment manufactured by the GM car division, does

United Motor Service also sell equipment which is purchased from independent parts and equipment manufacturers?

Mr. CASSEDY. Yes; that is my understanding. I would like to go a little further into this prepared statement, if I may.

Mr. McHUGH. Go right ahead.

Mr. CASSEDY. I believe I can answer some of those questions a little clearer.

The automotive-service industry consists of independent manufacturers and integrated vehicle manufacturers who manufacture, distribute and sell automotive parts, accessories, tools, equipment; independent parts wholesalers and integrated car dealers who purchase, distribute and sell such merchandise at wholesale; other integrated car dealers, equipment dealers, general and specialist independent repair shops, gasoline service stations, wholesale jobbers with repair facilities, and to some extent chain stores and mail-order houses, who purchase, distribute and sell such merchandise at retail; and others who combine the functions of manufacturer, wholesaler, and/or retailer in connection with the manufacture, distribution, and sale of these products.

The industry is called the automotive-service industry because of the service operation in the distribution of automotive products and in the repair of automotive-powered vehicles and equipment.

Mr. McHUGH. Mr. Cassidy, by "service operation" here you mean service that is required at the actual user level where the equipment is fitted into the car?

Mr. CASSEDY. And in addition there are so many hundreds of thousands of parts items that must be provided to maintain all of the various makes and models of automobiles, some of them 10 years or more old, that it takes technical experts to determine the types, kind, and function of parts.

Nearly every large parts dealer or wholesaler has a technical serviceman who can get parts for the repair or garage outlets when they need them. That is the service that is talked about.

Then the distribution itself is a service, making the parts available at the small garage in any locality throughout the country.

Conservatively estimated, there are at present in this industry approximately 1,200 independent manufacturers, about 12,000 independent wholesalers, distributors, or jobbers, about 49,000 integrated car dealers, and nearly 300,000 retail outlets that distribute and sell automotive products.

There are approximately 58 million automobiles, trucks, and buses on our streets and highways and additional millions of automotive-powered equipment units that must be kept in repair and in operation.

I would like to say that I was told this morning that my figure of 58 million automobiles is now 61 million automobiles, trucks, and buses on our streets, so I am not sure of the accuracy of either figure, but it is a very large number.

With each passing year there are new makes and models which require many thousands of products of different design and function that assembled together constitute the complete automotive-powered machine. They include engine and chassis parts, mufflers, carburetors, bearings, clutch transmission and differential units, ignition systems, oil filters, lubrication equipment, springs, fuel pumps, brakes, gears,

spark plugs, piston rings, bearings, pins, nuts, bolts, body parts, tires, batteries, and accessories, and many others.

Senator O'MAHONEY. Have you ever made a list of the various raw materials which are used in this industry?

Mr. CASSEDY. Not personally. I believe that that might be obtained. I am not positive just where, but I have heard it discussed. I think we might find something on that line if the committee might desire it.

Senator O'MAHONEY. I think we can do that.

Mr. CASSEDY. Yes.

Senator O'MAHONEY. I thought maybe you had also made that investigation.

Mr. CASSEDY. These automotive products are made by two major types of producers—the independent parts manufacturers and the integrated automobile manufacturers who also manufacture and sell replacement parts. The major automobile manufacturers are well-known as General Motors, Ford, Chrysler, Kaiser, Hudson, Nash, Packard, and Studebaker.

Mr. McHUGH. Mr. Cassidy, I wonder if you would explain now for the purpose of the record what you mean by "sales for original equipment" as distinguished from sales for the replacement market.

Mr. CASSEDY. To illustrate with General Motors. General Motors manufactures original equipment for its own automobiles. It also purchases parts to be used as original equipment on those same automobiles, that is, those purchases are from other manufacturers. They also make replacement parts which they sell in the replacement market. Now among the independent manufacturers there are three classifications, one that makes both replacement parts and original equipment, two, one who makes only replacement parts, and the third one, who makes only original equipment.

Now from those sources you see where the flow of the parts begins, that is those three, including those that General Motors makes and sells or the other car manufacturers make and sell.

Senator O'MAHONEY. Is there any difference between the parts manufactured by United Services and sold to independent dealers, and the parts which go to the various General Motors divisions for installation in the machine which is shipped to the dealers' salesrooms?

Mr. CASSEDY. Senator, you mentioned the term "United Motors." Is that United Motor Service?

Senator O'MAHONEY. Yes, that is the organization.

Mr. CASSEDY. As I understand it, the United Motor Service is a sales organization. They purchase and resell parts or they handle parts made by some of the car divisions or other divisions of General Motors.

Senator O'MAHONEY. I was led by your answer to the question which I propounded to identify this United Motor Service.

Mr. CASSEDY. I am not informed that they manufacture. If they do, I don't know.

Senator O'MAHONEY. It is merely a sales division?

Mr. CASSEDY. That is my understanding. I could be corrected, but as I understand it, they don't.

Senator O'MAHONEY. Do you have any knowledge as to whether or not it deals with the identical parts that go into the General Motor cars?

Mr. CASSEDY. Yes, sir; they do. They deal in the identical parts that go into the original equipment in General Motors cars.

Mr. McHUGH. Mr. Cassedy, are there a fairly large number of independent manufacturers who manufacture exclusively for original-equipment uses?

Mr. CASSEDDY. I have no figures on the number. I think there are some that limit their output to original equipment, but just who they are I can't say. I am told that there are some.

Mr. McHUGH. I understand that some of these independent parts manufacturers sell to General Motors for use in the assembly of a car as original equipment, and these same independent manufacturers also sell to General Motors for resale in the replacement market.

Mr. CASSEDDY. That is the second class; in other words, that is another class from those who sell only original equipment.

According to the trade publication Motor Age for January 1954, the—

vehicle manufacturers in conjunction with replacement parts manufacturers turned out parts and accessories for the automotive aftermarket alone during 1953 amounting to \$2 billion at the wholesale level. Converting \$2 billion to the prices paid for these parts and accessories by the vehicle-owning public and adding the cost of service labor, there is an estimated expenditure of somewhere around \$8 billion during 1953.

In addition to these figures it has been estimated that \$150 is spent each year on the average automotive vehicle to provide the parts, supplies, and equipment needed to keep it in satisfactory running condition. On this basis the present 58 million automotive-powered vehicles will provide an annual market for such automotive products of more than \$8½ million, which, of course, would include the service labor, which in the future will grow larger with the increase in the number of vehicles.

Mr. McHUGH. Mr. Cassedy, is this figure of \$8½ billion the approximate size of the automotive-service business just in the aftermarket, replacement market?

Mr. CASSEDDY. Yes, sir; that is the way the information was given to me.

Mr. McHUGH. This, then, doesn't include the value of parts and materials furnished by the independent manufacturer to the car manufacturers for assembly in the automobile?

Mr. CASSEDDY. No, sir; it excludes that.

The flow of distribution of automotive products as original equipment in the assembling of an automotive-powered vehicle and as replacement parts in the repair and maintenance of such vehicles begins with the independent parts manufacturers and the vehicle manufacturers who manufacture and sell the automotive products for both uses and purposes. I mentioned the three classes of independent manufacturers. Thus some independent parts manufacturers supply automotive products to the vehicle manufacturer who redistributes and sells such products through its integrated outlets in the replacement market.

Mr. McHUGH. Mr. Cassedy, I wonder if you would explain what you mean by the integrated outlets of the vehicle manufacturer.

Mr. CASSEDDY. I mean those, for instance, that as General Motors has 19,000 General Motors dealers throughout the country, we refer to those as integrated outlets. Now we might also refer to the independent wholesalers who handle General Motors products through the United Motor Service organization.

Mr. McHUGH. You would consider them in the channel of—

Mr. CASSEDY. Of integration.

Mr. McHUGH. Of integration with the General Motors Co.

Mr. CASSEDY. Yes, sir.

At the same time the independent manufacturer also distributes and sells, that is, some independent manufacturers also distribute and sell identical automotive products through independent wholesalers and retailers in the replacement market. In the industry these are called competitive parts. In addition the vehicle manufacturers also produce automotive products which are distributed and sold through integrated outlets in the replacement market. These are called "captive" parts.

For illustration, General Motors Corp. manufactures automotive products and also purchases automotive products from independent manufacturers. Some of both the manufactured and the purchased products are used as original equipment while some of both are sold in the replacement market.

According to reports from members of our association, General Motors establishes high list prices with low discounts on their "captive" parts, but establishes low list prices with high discounts on their "competitive" parts. Our members say that because of this policy the independent wholesaler finds it difficult, if not often impossible, to compete with General Motors car dealers and wholesalers handling General Motors parts in the replacement market.

Mr. McHUGH. Mr. Cassedy, I wonder if you would explain a little further what you mean by captive parts. Do I understand by that you are saying captive parts are parts manufactured exclusively by the General Motors Corp.?

Mr. CASSEDY. That's right, and exclusively handled by their integrated outlets.

Mr. McHUGH. And then there are products where there are no comparable competitive products made by any other manufacturers?

Mr. CASSEDY. Well, I wouldn't say that, because I don't have that information, but those parts made by General Motors are not sold by any independent outlets. In other words, they are not distributed through any outlets except their own integrated outlets.

Mr. McHUGH. Well, are there comparable parts which can be used for the same uses that these parts manufactured by General Motors are made?

Mr. CASSEDY. According to my information, there may be some comparable parts in the independent outlets. There must be some of the parts that are not made by any outside sources.

Mr. McHUGH. But for the most part with reference to the so-called captive parts, users are dependent upon a single source for these items.

Mr. CASSEDY. That's correct.

Mr. McHUGH. Can you advance any reason why the independent manufacturers or some independent manufacturers aren't able to or don't produce the type of product which you describe as a captive product?

Mr. CASSEDY. I presume that independent manufacturers that wanted to could manufacture any type of part that he desired unless there might be some patent restrictions or something of that sort that would prevent it.

Mr. McHUGH. That is what I was wondering, whether or not these happened to be items on which the General Motors Corp. may have patents which exclude other manufacturers.

Mr. CASSEDY. Possibly some are in that category.

Mr. McHUGH. In this connection, Mr. Cassedy, do you know how the discounts on these captive parts compare with those on the so-called competitive parts?

Mr. CASSEDY. The members of our association report to us that the discounts on captive parts are much lower than those on the so-called competitive parts that are sold by General Motors.

Mr. McHUGH. What is the reason for that?

Mr. CASSEDY. In other words, the captive parts are sold at higher prices.

Mr. McHUGH. You mentioned here that the list prices are higher on captive parts but the discounts are lower.

Mr. CASSEDY. That is true.

Mr. McHUGH. Now how would your dealers know that the list prices on captive parts are higher?

Mr. CASSEDY. By comparison with all parts distributed by General Motors dealers and wholesalers, the list seemed to be on what our members considered the value on those parts, on a higher plane than they are when you consider the value of the competitive parts.

Mr. McHUGH. Now if lower discounts are allowed by General Motors to independent wholesalers on these captive parts where there is no competition, would that indicate or suggest that General Motors Corp. is making a high return, a greater profit, on the sale of those parts?

Mr. CASSEDY. Yes, it does to me; it does so indicate that to me.

Generally speaking, there are approximately 19,000 car dealers and additional thousands of automotive jobbers—and by “automotive jobbers” I mean what we have termed “independent wholesalers”—who are distributing and selling General Motors products in the replacement market. This distribution is divided by the General Motors Corp. into a number of divisions or subsidiaries.

Among these are the car divisions, United Motor Service, AC Spark Plug, Delco-Remy, New Departure, and the Packard Electric Co. The United Motor Service division distributes General Motors replacement parts through automotive jobbers located throughout the United States, who handle either all or part of the United Motor Service line.

Mr. McHUGH. Mr. Cassedy, I wonder if you would just explain for the record what you mean by the Delco-Remy, New Departure, and Packard Electric Cos. Are these divisions of General Motors?

Mr. CASSEDY. They are divisions of General Motors that make and handle various types of parts or accessories or supplies.

Mr. McHUGH. And the parts and accessories or supplies made by these divisions are sold by the United Motor Service division?

Mr. CASSEDY. Yes.

Senator O'MAHONEY. What does New Departure signify, what type of part?

Mr. CASSEDY. Senator, I am not too sure, but bearings would be one. I am not sure about the parts that each sell.

Senator O'MAHONEY. Do you know what the Packard Electric Co.—

Mr. CASSEDY. They handle ignition. Delco-Remy, of course, is batteries, and the spark plug company handles spark plugs. That is about the extent of my knowledge on those details.

On January 1, 1954, General Motors announced a new pricing and distribution plan under which all 19,000 of its car dealers became wholesalers with no restrictions (which previously existed) on their receiving and wholesaling AC or United Motor Service products.

I might stop there and say, of course, a great many General Motors dealers were wholesalers before January 1, 1954, but there were restrictions prior to that time with respect to their handling AC and UMS products. After that time, they were permitted to handle the products previously handled through the United Motor Service wholesalers.

Mr. McHUGH. Mr. Cassedy, I wonder if you would explain a little bit more what you mean when you say that the 19,000 car dealers become wholesalers. To whom are they selling then?

Mr. CASSEDY. They became wholesalers in the same sense that independent wholesalers who are members of that association that I represent are engaged in the sale of parts to retailer outlets, such as the garage, repair shops, filling stations, many other outlets that handle parts and deal directly with the car owner or the consumer.

Mr. McHUGH. As a result of this change in policy, or the plan of General Motors Corp. by making its car dealers wholesale distributors, all 19,000 car dealers of General Motors are placed in direct competition, then, with the members of your association?

Mr. CASSEDY. Yes, and also in competition with the United Motor Service wholesalers who handle General Motors products.

In addition, General Motors "captive" parts were made available for the first time to the automotive jobbers handling AC and United Motor Service lines. Under the new plan, General Motors established what can best be described as a one-price policy to distinguish it from the previous pricing policy that included incentive and functional discounts. Letters to car dealers from the car-manufacturing divisions of General Motors urged the car dealers to enlarge their wholesale parts business, as follows—and this is quoted from one of their letters:

These changes materially broaden the line of parts which the General Motors dealer can offer at wholesale. They place every General Motors dealer in a position to do an aggressive job in making genuine General Motors parts available to repair shops and others who service General Motors cars, and to obtain the substantial gross profits from this business. They place you in a position to take full advantage of the possibilities of market for parts in your area. Furthermore, they should stimulate those General Motors dealers who at present are engaging in parts wholesaling to only a minor extent, or not at all, to examine carefully the gross-profit opportunities for the dealership that can come to them through wholesale parts activity.

In announcing this new plan, spokesmen for General Motors indicated its purpose and objective, as follows:

* * * the primary reason for the new policy is that General Motors, having manufactured approximately 50 percent of all cars, trucks, and engines, feel they should make effective a plan to penetrate the replacement-parts market they are rightfully entitled to.

Under the new one-price policy, General Motors now sells its automotive replacement products through its car divisions to car dealers

and through UMS and AC divisions to automotive jobbers at established prices.

Mr. McHUGH. Mr. Cassedy, at this point I am just wondering if you would explain what you mean by the one-price policy which is put into effect as part of this new wholesale parts plan as distinguished from the previous policy of the company.

Mr. CASSEDDY. Well, I can only explain it in a general way, because I don't have the exact discounts that were given, but prior to this plan they had a general trade discount. They had a wholesale-retail, a WR, discount.

They had different discounts to stimulate or to provide for the function performed by the distributor handling the parts. I would presume a little bit that some of the cases that the Federal Trade Commission had against parts manufacturers in this industry had some influence on General Motors changing its pricing system, so that they would discontinue the use of discounts, the so-called functional discounts, or volume discounts.

In any event, they did change, and they went to what I have said is best described as a one-price policy, so that they establish a single price on a product and give a single discount on that product, depending on whether or not the function is a wholesale or a retail function.

Mr. McHUGH. Are you familiar with the 2-percent cash discount to warehouse distributors which the General Motors Corp. has given?

Mr. CASSEDDY. Yes. They were not giving the 2-percent cash discount to their own car dealers for some period of time, I believe, during last year and some parts of this year.

I think during the first part of this year it was that they discontinued the 2-percent cash discount that was then previously given up to that time to the wholesaler handling their products, and their explanation of that was, so I am told, that they would be discriminating in price possibly under the Robinson-Patman Act if they continued to give the 2-percent cash discount to wholesalers and did not give it to their own car dealers.

Mr. McHUGH. Was the discontinuance of the 2-percent cash discount to warehouse distributors—did that come about as part of the new wholesale parts plan?

Mr. CASSEDDY. It did not come about in the beginning of the year when the plan was first introduced, but did come about subsequently, and you may consider it a continuing development of a new pricing plan.

Mr. McHUGH. Well, the car dealers who were wholesaling parts for General Motors previous to this plan were before that time in competition with the warehouse distributors, or the people to whom the warehouse distributors sold; is that not true?

Mr. CASSEDDY. Yes.

I would like to sort of comment there was certainly sort of an inequity that must have worked some unfairness in distribution that, I assume, was the basis for their correcting the practice.

However, I do not mean to imply that there is anything wrong or illegal granting 2-percent cash discount if it is given to all purchasers.

Under the new one-price policy, General Motors now sells its automotive-replacement products through its car divisions to car dealers and through UMS and AC divisions to automotive jobbers at established prices.

On wholesale sales the car dealers receive an override, making their cost identical with the automotive jobber, provided the parts sold by the car dealers are purchased from the car divisions. Thus General Motors has effectively removed all of its 19,000 car dealers as potential customers of the independent wholesalers of automotive products in the replacement market, and by that statement I mean their own USM wholesalers—by putting its car dealers into the wholesale replacement-parts business under conditions whereby the car dealers cannot afford to buy replacement parts from anyone but the General Motors car divisions.

Mr. McHUGH. What are these conditions, Mr. Cassedy, that you refer to here whereby the car dealers cannot afford to buy replacement parts from anyone but the General Motors car divisions?

Mr. CASSEDY. My next sentence explains it to some extent, and if you will let me read that first, I will discuss it.

That this is true is obvious since the car dealers will buy very little from the independent wholesaler because of the possibility of reselling such parts at wholesale and losing the override compensation that they would get if they bought the parts through the car divisions.

By that I mean that these car dealers who previously had purchased automotive replacement parts from United Motors Service wholesalers or other independent wholesalers would not be able to get it through that source, to get through that source the same discount that they would get from General Motors through the car divisions.

If they purchased their replacement parts that they resold at wholesale from the car divisions, they would get a larger discount and, of course, compensation through that discount for their wholesale sales.

Mr. McHUGH. By that you are saying that the General Motors Corp. then is allowing a higher discount to these car dealers as a result of this plan, say, on parts which General Motors buys from independent manufacturers than the same independent manufacturers will allow their wholesalers, who would be in competition with the General Motors car dealers?

Mr. CASSEDY. No; I think you have misunderstood me.

What I was saying was that General Motors sells replacement parts through United Motors Service divisions who, in turn, sell through the independent, some independent, wholesalers.

Now, when that wholesaler sells that part to someone else, he gets his wholesale commission on that part.

The same thing is true when the car dealer buys replacements parts through the car divisions from General Motors, and resells that part at wholesale, he gets the part at the same price that the independent wholesaler got it for, and he resells, presumably if he follows suggested prices, at the same price, and gets the same wholesale discount.

But, on the other hand, if the independent wholesaler sells to a car dealer he is not going to sell to him at the same price he bought it from, he has got to make a profit, so, therefore, the car dealer necessarily would buy at a higher price from the independent wholesaler than he would through his own car division; it would be only logical that he would buy through his car division and get the opportunity to resell and make the same profit that those in competition with him will make.

Mr. McHUGH. Would it be possible for the General Motors car dealers to purchase from independent wholesalers at a lower price or

a price as low as they are able to obtain from General Motors or from United Motors Service?

Mr. CASSEDY. I do not think so. It may be theoretically possible, but I do not think, as a practical thing, that the independent wholesaler would sell parts at the same price as he bought them for; there would be no profit in it.

Is there anything else I can go along on that?

Mr. McHUGH. Go ahead.

Mr. CASSEDY. Another practice of General Motors reported to members of our association is that this corporation represents in advertising that the replacement parts purchased by General Motors from independent manufacturers and sold through their car dealers and other wholesale outlets are "genuine parts," and implies in such advertising that any replacement parts which do not carry the General Motors "genuine parts" label are inferior, spurious, or gyp parts. It is well known in the industry that the independent parts manufacturers distribute replacement parts through independent automotive wholesalers which are identical with the replacement parts distributed by General Motors under the "genuine parts" label.

Many of the members of our association believe such representations constitute false advertising of such parts and false disparagement of identical parts sold by independent wholesalers. Many of our members say that this practice deceives the consuming public and wrongfully deprives the independent automotive wholesaler of a substantial amount of business.

Senator O'MAHONEY. Is that to say, Mr. Cassedy, that there are no inferior parts made in the industry?

Mr. CASSEDY. Not at all; I am sure there are grades of parts, and I know that to be true.

But I also know that there are a number of replacement parts made by independent manufacturers which go through General Motors into the replacement market and also go through the independent wholesalers into the replacement market.

Senator O'MAHONEY. My understanding from your testimony is that it is the practice in the industry, or has been for General Motors and other manufacturers, to buy certain parts from independent parts manufacturers; is that right?

Mr. CASSEDY. That is true.

Senator O'MAHONEY. And that these independent parts manufacturers also have sold their parts, the identical parts that they manufacture, to the independent jobbers and wholesalers.

Mr. CASSEDY. That is correct.

Senator O'MAHONEY. And that the new system which has been established of making all of the General Motors automobile dealers salesmen wholesalers of parts has the result of adversely affecting the independent parts wholesaler who heretofore has dealt with General Motors and with the small general public.

Mr. CASSEDY. Yes; that is a correct statement; I agree with that.

Senator O'MAHONEY. So this is an instance in which what is called integration operates to drive out of business an independent enterprise which heretofore has been recognized by General Motors and other manufacturers of cars as a legitimate part of the industry.

Mr. CASSEDY. Yes.

Senator, I would like to clarify it as fairly as I know how. General Motors buys some replacement parts that are not sold by independent manufacturers and independent wholesalers in the replacement market. In other words, they buy and sell certain types of replacement parts that do not have the counterpart on the independent side of the market.

But there are a number of parts that, I am told, are made by the same independent manufacturer on the same machine at the same time, and are identical with the parts called genuine parts by General Motors and sold in competition with those same identical parts that are handled by the independent jobber.

Now, I also know, and have seen, many of the advertising pictures by some of the car divisions of 2 identical—of at least 2 parts with a statement that these parts look identical, but they represent that they are not identical.

Senator O'MAHONEY. Do I understand you as meaning that in the factory of an independent parts manufacturer, from the same machine set up to turn out a particular part, the parts which are so produced may be divided into 2 divisions, 1 of which goes to General Motors and the other of which goes to some independent parts wholesaler; that these are parts manufactured by the same machine and are in all respects identical, but that one set of them is labeled "genuine" by General Motors, and the other, of course, being out of its control, is not labeled "genuine"?

Mr. CASSEDY. That is correct; and this matter——

Senator O'MAHONEY. But there is no difference between them?

Mr. CASSEDY. That is correct. This matter has been reported to the Federal Trade Commission, and I understand that the Commission has had this matter under investigation for some time.

Mr. McHUGH. Mr. Cassedy, do you think this type of advertising of the General Motors Corp., which they engage in, in connection with its "genuine" parts, is necessary in order to protect the public from spurious or gyp parts?

Mr. CASSEDY. There may be ways to use the term "genuine parts" that would be entirely correct and proper, but if it is used in a manner whereby it disparages the parts which are identical and sold by the independent wholesaler, then I say that is an improper use of that term, in my judgment.

Mr. McHUGH. Would you say that this genuine parts advertising program of the General Motors Corp. has the effect of funneling more of the business through General Motors and its channels of distribution?

Mr. CASSEDY. Yes; and further, it tends to limit or to give the General Motors Corps. a means of limiting their dealers and wholesalers in handling only the so-called genuine parts, and not purchasing any parts from other outside sources.

Mr. McHUGH. Is the appeal of such advertising only to the actual user or is this also directed at the car dealers?

Mr. CASSEDY. I think it certainly, by inference, is directed at the car dealer as well as to the consumer.

Mr. McHUGH. If that is, would you say that, perhaps, General Motors may be doing indirectly what the cease-and-desist order that was entered in 1941 on the coercion of dealers, was intended to prevent?

Mr. CASSEDY. I think that is one of the factors that should be considered in determining whether or not General Motors is violating that order or possibly violating the statute under other circumstances, and by the statute I am referring to section 3 of the Clayton Act, the exclusive dealing section.

Senator O'MAHONEY. Off the record.

(Discussion off the record.)

Senator O'MAHONEY. Proceed.

Mr. McHUGH. Will you continue, Mr. Cassidy?

Mr. CASSEDY. There is still another practice reported by the members of our association to which we direct your attention. Independent manufacturers—again I say some independent manufacturers—sell automotive products for original equipment to General Motors at lower prices than the prices charged for automotive products sold for replacement purposes.

Now, there, may I say that, I am not pointing that out as a complaint, but rather as a background fact.

The Federal Trade Commission in its cases against the spark-plug companies had held that such price discriminations are not unlawful because parts sold for replacement purposes do not compete with parts sold for original equipment, and because they do not compete, the Commission says there is no injury to competition flowing from the difference in the prices between replacement parts and original equipment.

It is believed by some of our members that General Motors is thus obtaining automotive replacement parts under the guise of original equipment at lower prices than the prices charged the independent wholesalers for identical replacement parts, and the General Motors is thereafter distributing and selling such automotive products through its car divisions in the replacement market.

I should have said car divisions and its wholesale outlets.

We are not informed as to the accuracy of this belief but it is supported by the reported fact that General Motors car dealers are now selling numerous replacement parts at lower prices than such parts can be purchased by independent wholesalers from the same independent parts manufacturer that sells to General Motors.

I cannot give you any illustrations of that, but I can say that there are wholesalers who know those facts, if you can get them, the wholesalers, to testify to them.

Mr. McHUGH. Mr. Cassidy, do you know whether or not General Motors, when it negotiates a price with independent manufacturers, makes its arrangements in the same contract when it buys for original equipment and when it buys for the replacement market?

Mr. CASSEDY. Personally I do not know, but I have heard, and labeling what I have heard as pure hearsay, I have heard that General Motors car divisions, for instance, have purchasing agents who purchase for—one will purchase for original equipment and another will purchase for replacement purposes; the same thing with the United Motors service division.

Mr. McHUGH. These are negotiated separately then, not as the same deal?

Mr. CASSEDY. I am saying that I have heard it is done separately: and, on the other hand, I have heard it is also done at the same time

through the same purchasing agent, and I have heard a third statement that on some occasions the independent manufacturer who sells to General Motors, both original equipment and replacement parts, does not even ask or does not even find out whether the parts are going to original equipment or replacement purposes, but only is concerned with how much he can sell them for, what price he can get.

Now, those are matters that are in the hands of other people, and I cannot speak for them. I have labeled the report of this on the basis that I have gotten it from hearsay sources.

The rumor, so to speak, of this is supported by reports we get from our members that some car dealers are selling certain parts that they obtained through their car divisions, and that those car dealers are selling at lower prices than the independent wholesaler can buy those parts for.

Mr. McHUGH. The same part?

Mr. CASSEDY. The same part from the independent manufacturer who was the original source of both.

Senator O'MAHONEY. It has been repeatedly suggested that unwanted cars are forced upon dealers.

It was also testified today that in the Federal Trade Commission investigation, unwanted parts were forced upon dealers.

Mr. CASSEDY. Well, I might give you some information about that.

Senator O'MAHONEY. Let me just finish.

Mr. CASSEDY. Excuse me, Senator; I am sorry.

Senator O'MAHONEY. It would not be surprising, therefore, would it, if a dealer received unwanted parts which were forced upon him, that he would try to unload them at the very best price he could?

Mr. CASSEDY. No; that would not surprise me; I think that probably may occur.

Senator O'MAHONEY. And that might be the explanation of what rumor tells you is the condition, namely, that General Motors car dealers are now selling numerous replacement parts at lower prices than such parts can be purchased by the independent wholesalers from the same independent parts manufacturer that sells to General Motors.

Mr. CASSEDY. Yes, sir; that may explain it.

Senator O'MAHONEY. Well, that would be an ideal way to make competition uncomfortable for the independent wholesaler, would it not?

Mr. CASSEDY. Yes, it would.

I would like to add this to that statement, that we have in this industry, in the replacement parts market, what are called fast-moving parts and slow-moving parts.

It is said that an automobile does not need repair until it is about 3, 4 years old, and from that point on until it is possibly 10 or 12 years old.

But with the change in models and makes of automobiles, there has been a corresponding change in thousands of parts.

The obsolescence of parts over the years is such that only a very well-to-do wholesaler can afford to stock parts that are, say, 10 or 12 years old that would be used in the repair of the older automobiles that are still operating.

Now, the same thing applies to the car dealers when they take on the wholesale function.

Now, if they handle only the fast-moving parts, they have a rapid turnover, and they are able to make more out of it; whereas traditionally the independent wholesaler has carried both the fast-moving and the slow-moving parts, and has rendered a better service to the retail outlets and to the consuming public.

Now, whether or not the car dealers are being forced to take on slow-moving parts, I do not know. I have not had any facts on that. But there may be some explanation in what you said, Senator, as to why they may sell some parts at lower prices than the same parts could be purchased by the independent wholesaler.

Mr. McHUGH. Mr. Cassedy, is there generally a considerable variance between the prices at which independent parts manufacturers sell such parts for original equipment and for replacement purposes?

Mr. CASSEDY. Yes. If I remember correctly, on spark plugs there was a difference between 5 and 6 cents for original equipment and 22 cents for replacement parts. If I have got my figures accurate, I think it is approximately that amount.

Mr. McHUGH. Does this mean then that a manufacturer of such parts for original equipment has to make his profit on the sales in replacement parts, in the replacement market?

Mr. CASSEDY. Yes.

Mr. McHUGH. This means then that the burden is really upon those users who have to purchase, perhaps, the same part several times for replacement purposes?

Mr. CASSEDY. Yes.

I might say that the Federal Trade Commission attacked the practice of making different prices on original equipment from the prices on replacement parts in its complaints against the spark-plug companies.

The hearing examiner, I believe that the hearing examiner, held that that practice was illegal and in violation of the Robinson-Patman Act which prohibits price discrimination; but the Commission itself, I believe, reversed the hearing examiner and held that the practice was not illegal where there was no competition between those who purchased the original equipment and those who purchased the replacement parts and, therefore, no injury to competition because there was no competition; that is, in general, the nature of the spark-plug cases.

If this is occurring in this manner the independent manufacturer is granting and General Motors is receiving price discriminations that substantially injure the competition of independent wholesalers.

In a proceeding by the Federal Trade Commission against General Motors Corp., Docket No. 3152, decided November 12, 1941, the Commission made, among others, the following findings of fact—before I read these findings, Senator, I see the copy of the entire decision has already been introduced in the record.

Senator O'MAHONEY. Yes, they are already in the record, and I think you may assume—

Mr. CASSEDY. I may skip it, to say that this part I have quoted deals with the coercion and intimidation found by the Commission to have been exercised by the General Motors Corp. on its dealers.

Senator O'MAHONEY. These extracts will be printed in your statement as though read. You may proceed.

(The portion of the statement referred to follows:)

In the course of its dealings with dealers, the respondent General Motors Sales Corp. adopted acts and practices which were designed to, and did, intimidate such dealers, and which coerced and compelled them to purchase parts and accessories solely from the respondent General Motors Sales Corp. and prohibited purchases from outside sources except in cases of emergency when the "genuine" part or accessory was not available in General Motors' warehouse. There are approximately 14,000 General Motors dealerships, exclusive of associate dealers, located throughout the country, the status of each of which is determined by a franchise agreement which is subject to annual renewal and to cancellation on very short notice, without cause. Although every dealer is an independent businessman, the supervision and control exercised by General Motors Sales Corp. over his business operations is almost as complete as if the dealer were an agent in all respects. Every dealer acquires a substantial investment in buildings, cars, parts and accessories, and builds up goodwill in a community. Consequently, a canceled dealership leaves the respondents with one less retail outlet, which can be readily replaced, but leaves the disfranchised dealer without a business and burdened with his substantial investment, in the liquidation of which he is likely to sustain a heavy loss.

Although the original franchise or agreement made with the dealer runs for an indefinite period of time, it is customary to renew such contracts the latter part of each year for the ensuing year. In this connection it is customary for the zone manager to call meetings of the dealers in each of the districts, at which all dealers attend. After a sales talk, usually by the zone manager, the dealers present are required to attend a series of personal interviews with representatives of various departments of General Motors Sales Corp., such as the parts and accessories departments, with a final interview with the zone manager, at which time the requirements for the coming year are reviewed, as arrived at in interviews with the various departments including the parts and accessories department. The dealer is required to secure the approval of each of these representatives and to agree with the zone manager on the subject of car requirements before the franchise agreement is renewed. Such arrangement carries with it an implied threat of cancellation unless satisfactory arrangements are made with the parts and accessories managers, as well as the zone manager, and, to this extent, a number of dealers have been coerced into the purchase of parts and accessories over and above their requirements because of such implied threat of cancellation of the contract.

As a further means of coercion and compulsion in order to prevent dealers from purchasing parts and accessories from outside sources, the respondent General Motors Sales Corp. has, in many cases, delivered automobiles equipped with various accessories which were not ordered by the dealer, and has shipped accessories to the dealers, with or without cars without prior order therefor. In addition thereto, it was customary for said respondent to require the dealers to project future requirements in parts and accessories, and in many cases the said respondent thereafter treated such projections as orders and made shipments thereon. The entire plan was so designed as to prevent a dealer from making any purchases from jobbers or other manufacturers and to eliminate all parts and accessories other than those sold and distributed by the respondent General Motors Sales Corp.

Mr. CASSEDY. If I may just read the last sentence in which it sums it up at the top of page:

The entire plan was so designed as to prevent a dealer from making any purchases from jobbers or other manufacturers and to eliminate all parts and accessories other than those sold and distributed by the respondent General Motors Sales Corp.

The Commission concluded that the acts and practices of General Motors constitute unfair methods of competition—I have corrected the English—injure the public and competitors of General Motors, substantially lessen competition and tend to create a monopoly in replacement parts used on General Motors cars, in violation of the Federal Trade Commission Act and the Clayton Act.

Based upon the foregoing, the Commission ordered General Motors to cease and desist—I learned for the first time this morning, Senator, listening to my friend Donald MacDonald, of the Federal Trade Commission, that there was a difference in—at least somebody suggested there was a difference in—the order with respect to accessories or supplies and with respect to replacement parts.

I notice that the paragraphs of the order through paragraph 6 refer to accessories and supplies, whereas the paragraph relating to the Clayton Act provision mentions automotive parts.

The quote I make is particularly directed to accessories or supplies. Frankly, I had not found the word “supplies” in the findings, and I had assumed that the word “supplies” covered parts.

Now, whether or not that be true is possibly not to be debated now because the Commission did condemn the practice of coercion and intimidation that required their dealers to deal exclusively in General Motors products, and it is that principle and that type of thing that I want to mention now.

The use of any system or practice, plan, or method of doing business, for the purpose, or having the effect, of coercing or intimidating automobile retail dealers who have contracts or selling agreements or franchises of the respondents for the sale of new motor vehicles into purchasing or dealing in accessories or supplies manufactured or supplied by the respondents, or by anyone designated by them for use in and on automobiles sold by the respondents.

Reports from members of our association indicate that notwithstanding this decision of the Federal Trade Commission, General Motors has continued the same or similar acts and practices, condemned by the Commission, which actually or impliedly intimidate and coerce the car dealers to deal exclusively in automotive replacement parts purchased from General Motors. Moreover, at the present time there seems to be widespread belief established in the public mind, no doubt by General Motors, that exclusive dealing by its car dealers is the orthodox rule and that any deviation therefrom is rank heresy. But be that as it may, General Motors has now effectively foreclosed its competitors, particularly independent automotive parts manufacturers and independent automotive parts wholesalers, from their car dealers who constitute a substantial share of the consuming market in replacement parts.

Mr. McHUGH. Mr. Cassidy, do your jobbers complain that the General Motors Corp. has been forcing their dealers to take any particular types of parts or accessories?

Mr. CASSEDY. I can't answer that insofar as car dealers are concerned except again by what I have heard wholesalers say. I can answer it better with respect to wholesalers who have taken on the UMS lines.

According to my information, General Motors has a package claim whereby they will supply a wholesaler with—

Mr. McHUGH. Excuse me, Mr. Cassidy, you are speaking now of some sort of coercion on the jobbers who are handling—

Mr. CASSEDY. Well, I didn't label it as coercion, but only as a possibly negotiated plan, but once they take on the plan to get some General Motors parts, I am told that they must take the whole package.

Mr. McHUGH. My question was directed at any evidence or any complaints by your jobbers of any efforts by the General Motors Corp.

to induce or persuade the franchise dealers to handle any particular types of parts or accessories.

I am speaking in particular and wondering whether or not your jobbers complain at the present time with reference to undercoating or antifreeze that General Motors is requiring its dealers to handle.

Mr. CASSEDY. I don't think I can give you an answer that would be worth anything on that point. I have heard discussions of that, but nothing in such a factual way that I could give you any help.

In presenting this statement we desire to point out that the foregoing factual matters relative to General Motors are supplied at the request of counsel for the committee.

Let me say this: That I talked with counsel for the committee and asked what type of matter they wanted, and I was told that they wanted as much on the factual basis as we could supply, and knowing that the information that I might supply would be merely what I had heard from members of our association, I have tried to comply with that, and I also have in mind that this statement will be sent to the members of our association, and I wanted our members to understand why it was so limited.

We have not discussed the size of General Motors, its integrated divisions, subsidiaries, dealers, and other wholesale and retail outlets because we wish to emphasize that we are not opposed to bigness as such. We believe that in a country such as ours, particularly in its relatively new role as a world leader, we need the incentive to grow big as part of our free competitive enterprise system.

Senator, I am not going to wave the flag on any speech. I will skip over this part.

Senator O'MAHONEY. Let me ask you a question or two before you skip. You speak of the need of an incentive to grow big. Suppose the system operates in such a manner as to remove incentive and substitute coercion in its place; what then?

Mr. CASSEDY. Then it violates the antitrust laws, Senator, and should be considered for either breaking up such an organization into smaller parts, or stop it in some way.

Senator O'MAHONEY. You have no objection to bigness as such, but you do have objection to bigness which grows large by the means of the use of such practices as were condemned in the Federal Trade Commission cease and desist order, I suppose?

Mr. CASSEDY. Yes, sir; I would certainly follow that thought.

Senator O'MAHONEY. In your explanatory statement a moment ago of the reason for your devoting this paper to factual matters, you said that you did this at the request of the committee, and then you used the word "limited." I don't want you to feel that you are limited by this committee from adding any testimony that you wish to add.

Mr. CASSEDY. Senator, I spent over 9 years at the Federal Trade Commission on the staff and dealt with a great many antitrust problems, and I am very much in accord with the philosophy of the antitrust laws and believe that they should be enforced.

But I did not think that I should prosecute General Motors here before this committee. I thought that I should limit myself to the facts that I could supply or the reported facts.

Senator O'MAHONEY. I wanted the record clear that there was no limitation placed upon you.

Mr. CASSEDY. That's right.

Senator O'MAHONEY. We asked you, the staff asked you, to present a factual discussion, that is true, but I want nobody who reads this record to think that we were holding any whip over you to prevent you from adding any further testimony you may desire to.

Mr. CASSEDY. Thank you very much.

Certain types of production necessarily require large capital investments and large-scale operations. But by the same token the vast number of small, independent businesses that constitute such a vital part of our economy are essential to any free competitive enterprise system worthy of the name.

There is no special virtue in being small, just as there is no particular merit in being big, but there is a virtue and great merit in being free and independent.

A really free competitive enterprise system embraces the sum total of millions of day-by-day decisions—some good and some bad—but freely made by individuals acting individually in the conduct of their own businesses.

Small-business men must be protected in their right as American citizens to be independent, to make their own decisions, and to determine their own actions in accordance with their own judgments. Big business, though not to be condemned merely because it is big, must not be permitted to black out small business, to rob it of its freedom of choice in decision and action, or to make small-business men its pawns on the chessboard of overreaching economic power.

The importance of independent wholesale distribution by wholesalers and car dealers in the automotive service industry, as well as by wholesalers in other industries, cannot be overemphasized for the protection and maintenance of our American free competitive enterprise system, for the independence of the wholesaler is vital to that system.

"Availability" is the keynote in American distribution. Our country is unique in that known brands of all kinds of goods are available in every nook and cranny of its wide stretches. In deed, that is the miracle of distribution.

The wholesaler is a specialist in making merchandise available. He gives time-value and place value to goods. He is the bridge that connects thousands of manufacturers with hundreds of thousands of retailers. He buys goods in wholesale quantities, warehouses them, breaks them up into quantities as needed by his retail customers, makes delivery, extends credit, and furnishes merchandising aids and business-building counsel to retailers. He is the long arm of the producer reaching out and giving availability to merchandise everywhere.

Few manufacturers, if any, can directly serve the retailer as economically and as well as they can through wholesalers. Many thousands of producers and hundreds of thousands of retailers simply could not exist were it not for the services which the wholesaler provides. If by some calamitous circumstance the wholesaler could be and were eliminated, the great majority of small manufacturers and retailers, too, would be eliminated. Monopoly, already dominant in many or most leading industries, would become even more entrenched.

The existence of a host of independent businesses—large, medium, and small—is the foundation of a democratic, competitive economy. Wholesale distribution makes that possible. It is, therefore, a prin-

principal bulwark against monopoly and a tremendously important factor in maintaining our free competitive enterprise system.

Independent automotive wholesalers realize that perhaps unwittingly the extreme difficulty in enacting and enforcing our antitrust laws has played directly into the hands of overreaching aggregations of economic power. It is our belief that the basic reason for the failure of our antitrust laws to function as intended stems from the "unbalance" in our economy as between decentralized distribution on the one hand and the concentration of power in industry and in labor on the other.

For example, the Sherman antitrust law prohibits conspiracy to fix prices. If two small-business men agree together on the prices of a product sold in competition by them they violate the antitrust law, but a huge, integrated organization, acting as a single legal person, can establish price policies that have a decided effect upon tens of thousands of other persons and no question of conspiracy arises. The result illustrates the "unbalance" in our economy which must be corrected by enactment and enforcement of our antitrust laws. If this cannot be done, then we court the adoption of a system of collective bargaining for the small-business men engaged in wholesale distribution.

May I divert there to say that that thought came to me from an editorial that I read in the National Automobile Dealers Association magazine for October of this present year, 1955, which describes the plight of the car dealer who has put his last savings and earnings into a business of handling cars of a certain car manufacturer who may, overnight, take his franchise away from him and cause him to lose that investment.

What position that small-business man of this country is in when that happens and what he can do about it was the point made in the editorial that I thought tended to saying, it tended to the idea of saying that singly he could do nothing, but collectively he could accomplish something that would give him self-protection.

Personally I would regret to see collective bargaining among wholesale distributors. It couldn't be done now legally. It could only be done if the law were changed.

In conclusion we recommend:

(1) That the antitrust laws designed to protect and preserve small, independent businessmen be strengthened so as to allow freedom of choice in decision and action and to secure equality of opportunity of all persons to compete in trade or business;

(2) that coercion, intimidation, and exclusive dealing in any line of commerce be prohibited by enactment of both civil and criminal statutes;

(3) that legislation be enacted requiring automotive-parts manufacturers to brand all parts sold as original equipment so that they may be distinguished from similar parts sold as replacement parts at higher prices, and requiring that records of sales of parts for each purpose be kept for a period of 6 years; and

(4) That section 3 of the Clayton Act as it relates to the legality of both tying and exclusive arrangements be restudied and rewritten in the light of recent court interpretations so as to protect and preserve the independence of the small-business man.

That completes my prepared statement.

Mr. McHUGH. Mr. Cassedy, with reference to your second recommendation there, can't the criminal provisions of the Sherman Act now be extended to apply to coercion and exclusive dealing practices?

Mr. CASSEDY. Yes, I think they can. However, I do know that many particular acts and practices have been dealt with by special statutes as, for instance, price discrimination and so in the Robinson-Patman Act and exclusive dealing has been dealt with in section 3 of the Clayton Act.

Mr. McHUGH. Mr. Cassedy, do your wholesalers or jobbers, members of your association, complain that the United Motor Service exerts pressure in any way upon its jobbers, the people to whom it sells, not to handle competitive lines?

Mr. CASSEDY. I have not heard of any coercive or intimidation practices by General Motors on United Motor Service jobbers, but I have heard of certain exclusionary promotional activities that would tend to exclusive dealing with the jobbers.

Mr. McHUGH. Could you describe what they are?

Mr. CASSEDY. Yes. I started a few minutes ago with respect to the package plan.

Now the package deal which General Motors proposes that its jobbers handle, some independent jobbers handle only very few or maybe one line of parts. Some may handle only the A. C. Spark Plug line. Some, on the other hand, may handle all the lines General Motors sells.

I am told that there is an effort now being made by General Motors through its United Motor Service division to get the independent jobbers who take on any part of their lines to take the whole package and make a contract for a large amount or quantity in dollarwise parts, and in that way so supply and fill their shelves that they have no way that they can take on competing lines.

In other words, if they take on a contract for say \$100,000 of parts at a time, and agree that General Motors can have their salesmen or representatives come into their place and check their stock from time to time and replace and keep that stock full, they do that, I suppose, in a lawful way, but it has the effect of excluding from the practical standpoint all competing lines in that establishment.

Mr. McHUGH. Are there any special inducements given by United Motor Service to their jobbers to take on the so-called package deal?

Mr. CASSEDY. There may be some, but I can't name them; supplying them the various lines of parts may be considered an inducement, supplying them with certain lines that are hard to get may be a desirable inducement, giving them technical service with respect to keeping their stock filled may be a special inducement.

Those are things that you can best get from one of the United Motor Service jobbers; I mean he would know the facts better than I do.

Mr. McHUGH. Does such a practice have the effect of restricting the market into which the independent parts manufacturer can sell?

Mr. CASSEDY. Yes; in my judgment it does. There are some independent wholesalers who had not taken on General Motors lines who have, so I am told, become so afraid of their position in the market they were afraid they would be forced out of business if they didn't take on the General Motors line.

Mr. McHUGH. Senator, I have no more questions.

Senator O'MAHONEY. I would like to ask you to turn, Mr. Cassedy, to the first two pages of your statement.

I am referring to your statement on the first page that Motor and Equipment Wholesalers Association which you represent has approximately 3,500 wholesale trade outlets throughout the United States and Canada among its members.

Mr. CASSEDDY. Yes, sir.

Senator O'MAHONEY. Your statement on the second page conservatively estimated there are at present in this industry approximately 1,200 independent manufacturers, and about 12,000 independent wholesalers, distributors, or jobbers are included. Now are these independent manufacturers members of your organization?

Mr. CASSEDDY. No, sir; we have no manufacturers in this association.

Senator O'MAHONEY. And are the 12,000 independent wholesalers, distributors, or jobbers engaged in the same business as the 3,500 wholesale trade outlets represented by your organization?

Mr. CASSEDDY. Generally speaking, yes, sir.

Senator O'MAHONEY. Are they bigger or smaller than your members?

Mr. CASSEDDY. That, of course, is hard to answer. We have some very large wholesaler members who have a number of individual outlets. We would consider them to be one member, but maybe have as many as 5 or 10 wholesale stores that we would term wholesale outlets.

Senator O'MAHONEY. Well, does your organization represent a substantial proportion of the trade in independent selling of automotive products?

Mr. CASSEDDY. Yes, sir, it does; it represents a substantial number of the wholesalers.

Senator O'MAHONEY. What percent would you indicate? I am now talking of the aggregate trade, not members.

Mr. CASSEDDY. I would estimate close to 15 percent.

Senator O'MAHONEY. Of the actual trade?

Mr. CASSEDDY. Of the wholesalers.

Senator O'MAHONEY. Of the independent wholesalers, is my question?

Mr. CASSEDDY. Yes, sir, that's right. I would estimate about 15 percent of the independent wholesalers.

Senator O'MAHONEY. Do these other 85 percent in your opinion have a different status from the members of your organization?

Mr. CASSEDDY. No. They are substantially in the same status. I don't know, Senator, how many of the wholesalers among those 12,000 have taken on United Motor Service lines. There are some several thousand of course that have. I have no way of knowing that.

Senator O'MAHONEY. Have any of your members taken on United Motor Service?

Mr. CASSEDDY. Yes; many of them have.

Senator O'MAHONEY. What do they report to you, if anything, about the result of their business?

Mr. CASSEDDY. Senator, I don't have enough information on what they report. Most of what I know would be so remotely heard or so far removed from me that I would rather someone else gave that information.

Senator O'MAHONEY. Well, the general summary of your statement I think is that the present system whereby General Motors has made wholesale dealers of its 19,000 local dealers has established an economic situation which is very disadvantageous to all of the dealers in parts, whether they are members of your organization or not.

Mr. CASSEDY. Yes; it certainly has.

Senator O'MAHONEY. Do you have any doubt about that?

Mr. CASSEDY. I have no doubt about it at all. In fact the general effect of this exclusive dealing arrangement with their car dealers is that most everyone in the public thinks it is entirely proper for General Motors to require exclusive dealing on the part of its Chevrolet or Buick dealers or any other car dealers that it has.

Senator O'MAHONEY. How many States are represented by your 3,500 wholesale dealers?

Mr. CASSEDY. All of them, all 48 States.

Senator O'MAHONEY. All of the States?

Mr. CASSEDY. Yes, sir.

Senator O'MAHONEY. Then if we add the others to make up the 12,000 independent wholesalers to which you referred on page 2, how many cities in the United States do you suppose are affected or have such dealers within their boundaries?

Mr. CASSEDY. Senator, nearly every city of any size at all has a wholesale automotive parts dealer.

Senator O'MAHONEY. What will you give as the minimum population, sir?

Mr. CASSEDY. I was trying to think. I was in Memphis a short time ago and I heard some automotive parts wholesaler say there how many they had in members, but there were quite a number in that one city.

Senator O'MAHONEY. You misunderstood me. I am trying to determine what is the smallest community in the United States which has such a dealer, a community of 25,000?

Mr. CASSEDY. Senator, I have my own small hometown down in south Mississippi that has two wholesale parts dealers in my town, that has less than 10,000 people.

Senator O'MAHONEY. So that you would say that most of the urban population of America is to be found in towns and cities in which there are independent wholesale dealers of automotive parts?

Mr. CASSEDY. Yes.

Senator O'MAHONEY. When we are speaking of local free enterprise, are these dealers to be included within that definition?

Mr. CASSEDY. Yes, sir.

Senator O'MAHONEY. If a system is permitted to grow by which the business in which they have traditionally engaged is taken away from them and concentrated in the hands of the largest manufacturing company in the world, would you say that free enterprise was advanced or retarded?

Mr. CASSEDY. It would certainly be retarded and destroyed.

Senator O'MAHONEY. We thank you very much, Mr. Cassidy, for your presentation. The committee will stand in recess until 10 o'clock Monday morning in this room.

(Whereupon, at 3:45 p. m., the committee adjourned, to reconvene at 10 a. m. Monday, November 21, 1955.)

A STUDY OF THE ANTITRUST LAWS

MONDAY, NOVEMBER 21, 1955

UNITED STATES SENATE,
SUBCOMMITTEE ON ANTITRUST AND MONOPOLY
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met, pursuant to recess, at 10:30 a. m., in room 457, Senate Office Building. Senator Joseph C. O'Mahoney presiding. Present: Senators O'Mahoney (presiding), Kefauver, and Dirksen.

Also present: Joseph W. Burns, chief counsel; Donald P. McHugh, assistant counsel; and Joseph A. Seeley, assistant counsel.

Senator O'MAHONEY. You may proceed, Mr. Burns. Who is your first witness?

Mr. BURNS. The first witness this morning will be Mr. Harold T. Halfpenny, and Mr. McHugh will examine him.

STATEMENT OF HAROLD T. HALFPENNY, COUNSEL, NATIONAL STANDARD PARTS ASSOCIATION; ACCOMPANIED BY JACK L. WIGGINS, EXECUTIVE VICE PRESIDENT

Mr. McHUGH. Mr. Halfpenny, do you have a prepared statement?

Mr. HALFPENNY. Yes, I do.

Mr. McHugh and Senators, I have a brief statement that I prepared, and supplementing one that I have previously given, and accompanying me here this morning in this statement is Mr. Jack L. Wiggins, executive vice president of the National Standard Parts Association, from Chicago.

I am appearing as their general counsel. National Standard Parts Association is a national trade association with a membership of approximately 350 manufacturers, and 2,500 wholesalers of automotive parts, supplies, and equipment, and they are located in the 48 States throughout the country.

Senator O'MAHONEY. Pardon me, before you proceed further, will you identify yourself by experience and the time of association with the Standard Parts Association, and identify Mr. Wiggins also or you may speak for yourself on that. I want to know how long you have held these respective positions.

Mr. HALFPENNY. Yes.

Senator O'MAHONEY. Proceed; and what your previous experience has been.

Mr. HALFPENNY. I have been general counsel for National Standard Parts for about, approximately 20 years, and during that period of time have specialized in the field of representing independent manu-

facturers and wholesalers in the automotive replacement industry.

Prior to the 20 years, Mr. Wiggins has been in this field, and he will tell you his background in this industry.

Mr. WIGGINS. Well, my background is 1920 starting in the industry as a representative of manufacturers, working for manufacturers; and in 1934 I became field supervisor for National Standard Parts Association; in 1947 I became their executive vice president.

Senator O'MAHONEY. What were you doing for manufacturers at the beginning?

Mr. WIGGINS. I was advertising sales manager for manufacturers of automotive parts in Cincinnati; I was a manufacturer's agent, having my own business in Chicago; I worked for an automotive publishing company in Philadelphia, and also I represented a local association in Chicago of wholesalers.

Senator O'MAHONEY. When was the organization of which you are the executive vice president formed?

Mr. WIGGINS. 1924.

Senator O'MAHONEY. Have you been associated with it——

Mr. WIGGINS. Since 1934.

Senator O'MAHONEY (continuing). Since 1934?

Mr. WIGGINS. 1934.

Senator O'MAHONEY. You have been associated——

Mr. HALFPENNY. About 20 years, Mr. Chairman; general counsel. As I stated, I am in general practice, but specializing in the automotive replacement field in the independent industry, independent wholesalers, and independent manufacturers.

Senator O'MAHONEY. Thank you very much.

Mr. HALFPENNY. If it please the committee, previously on August 31, I had the privilege of appearing and testifying before the subcommittee, and at that time I detailed the growth and distribution problems of the automotive replacement industry, pointing out that the 3 major vehicle manufacturers not only assembled vehicles but actively engaged in the production and distribution of automotive replacement parts and services, that the 3 major vehicle manufacturers in attempting not only to sell original equipment but to control all repairs and services to their respective vehicles are trying to create a monopoly. Today's testimony supplements such previous testimony to particularize and direct your attention to General Motors' growing concentration of power.

Mr. McHUGH. Mr. Halfpenny, may I interrupt you at this point to learn something more about the composition of the membership of your organization. Among the manufacturers who belong to your organization, are there persons who furnish the General Motors Corp. with parts and equipment?

Mr. HALFPENNY. That is correct, sir; they furnish parts to General Motors and also supply our independent wholesalers with those parts.

They are identical parts that are supplied both to General Motors and to the replacement market.

Mr. McHUGH. Do some of these manufacturers furnish General Motors equipment just for use in the assembly of the automobiles?

Mr. HALFPENNY. Our members, no. All of our members would supply the independent wholesaler, as well. The great majority of

them would supply just wholesalers; but we do have people that supply both General Motors and major car equipment, and the wholesalers, but to be eligible for membership in our organization they must distribute through independent wholesalers.

Mr. McHUGH. Among the jobbers who are members of your association, do you have wholesalers who purchase from United Motors Service?

Mr. HALFPENNY. We do, sir.

Mr. McHUGH. And you do have wholesalers who purchase from independent manufacturers and do not have connection with United Motors Service?

Mr. HALFPENNY. Some are dual; they have United Motors Service, and they purchase from independent manufacturers.

Mr. McHUGH. All right; fine.

Mr. HALFPENNY. Continuing, the automotive service trade is comprised of approximately 1,200 manufacturers who manufacture and sell and distribute automotive replacement parts, several integrated vehicle manufacturers who manufacture, purchase automotive parts which they sell and distribute for replacement purposes, approximately 49,000 integrated car dealers, and approximately 1,200 independent distributors and jobbers, and a substantial number of chain stores, jobber retail organizations, warehouse distributors, and others who combine the function of manufacturer and wholesaler or wholesaler and retailer in the sale and distribution of replacement parts.

In addition, there are approximately 300,000 retail outlets, including car and equipment dealers, general and specialist repair shops, garages, gasoline stations, jobbers with repair facilities, chainstores and mail-order houses who sell and distribute replacement parts to car owners. The market structure is highly complicated with many different patterns that criss-cross the industry.

Mr. McHUGH. Excuse me, Mr. Halfpenny, I do not seem to find that in the statement, mimeographed statement, that I have here.

Mr. HALFPENNY. I was just giving—I just give that background—it is in my previous testimony—and I would like to incorporate that by reference. I have a copy of that, if you do not already have it in the record. It is in once; I do not know whether you want it—

Mr. McHUGH. This is by way of further amplification of the structure of the industry?

Mr. HALFPENNY. That is right.

Mr. McHUGH. I do not think it will be necessary.

Senator O'MAHONEY. I would like to see a copy. He says he has the copy.

Mr. HALFPENNY. Here it is.

Senator O'MAHONEY. Do you have another copy?

Mr. HALFPENNY. Yes, sir; I do.

Senator O'MAHONEY. Please hand it out.

Mr. HALFPENNY. I will not go into the details of that because that gives the whole background of the market structure; that details, Senator, the background of the industry.

Senator O'MAHONEY. May I ask you, sir, to read it again because the committee and the staff were looking for it in vain in your statement, so I would like to have Senator Dickson and myself have the

opportunity of having it presented again. This need not be on the record.

(Discussion off the record.)

Senator O'MAHONEY. These 1,200 independent manufacturers first mentioned—

Mr. HALFPENNY. Yes, sir.

Senator O'MAHONEY (continuing). Where are they to be found in the States?

Mr. HALFPENNY. They are located in approximately all of the States of the Union with, I would say, the greatest concentration being in Ohio, Michigan, Illinois, and Pennsylvania.

Senator O'MAHONEY. Ohio, Michigan, Illinois, and what?

Mr. HALFPENNY. Pennsylvania. But they are scattered pretty much, Senator, through the 48 States.

Senator O'MAHONEY. How long have they been engaged, on the average, in the production of these parts?

Mr. HALFPENNY. I would say most of them have been engaged from 40 to 50 years; many of them started back in the carriage business, and developed parts that have been used in the assembly of automobiles by the vehicles manufacturers.

Senator O'MAHONEY. Now, then, with respect to the integrated car dealers, what do you mean by that 49,000 integrated car dealers?

Mr. HALFPENNY. They not only sell cars of the various major vehicle manufacturers, but they also supply parts that they sell, the repair parts, and they also supply service of various kinds in repairing those cars.

Senator O'MAHONEY. I ask those questions because the word "integrated"—

Mr. HALFPENNY. Yes, that is what we mean.

Senator O'MAHONEY (continuing). Is usually meant to refer to a manufacturing company which covers the whole gamut of a particular industry.

Now, the car leaders of whom you speak here, integrated car dealers, are not manufacturers of cars; are they?

Mr. HALFPENNY. No; they are the manufacturers' dealers, and operate under a franchise from the vehicle manufacturer, and they supply parts and service.

Senator O'MAHONEY. How long have they been doing that?

Mr. HALFPENNY. Well—

Mr. HIGGINS. Since the end of the war, I mean, is when they became very active in it.

Mr. HALFPENNY. In the parts business.

Mr. HIGGINS. That is World War II.

Senator O'MAHONEY. Then I take it the parts manufacturers did not have competition from the 49,000 integrated car dealers until approximately after the Second World War?

Mr. HALFPENNY. They had some, but not serious competition until after the end of World War II.

Senator O'MAHONEY. From whom do the 12,000 independent distributors and jobbers obtain their parts?

Mr. HALFPENNY. They obtain their products from the 1,200 manufacturers, approximately 1,200 manufacturers and, as I will develop in our testimony, some of them now are also being supplied by General Motors.

Senator O'MAHONEY. And these independent distributors and jobbers operate in how many States?

Mr. HALFPENNY. The 48 States in great numbers.

Senator O'MAHONEY. Now, then, the same situation, I assume, exists with respect to the chain stores and the jobber retailer organizations?

Mr. HALFPENNY. That is right.

Senator O'MAHONEY. Thank you very much.

Mr. HALFPENNY. I thought I would just give you that background. It is incorporated, as I testified before—

Senator O'MAHONEY. Well, the importance of my questions as I conceive them was to determine whether or not the concentration of the manufacture and distribution of parts in the car manufacturers was having an adverse effect upon the industry and upon the jobbers as a whole.

Mr. HALFPENNY. That is right; I understand.

Mr. McHUGH. Mr. Halfpenny, are the various manufacturing divisions of General Motors divisions members of your association?

Mr. HIGGINS. Two of them, AC Spark Plug, United Motors Service.

Mr. McHUGH. These are the distribution divisions then?

Mr. HALFPENNY. That is correct.

Mr. McHUGH. But the various manufacturing divisions as such, they do not belong?

Mr. HALFPENNY. Just the distribution divisions, and we felt that under existing laws when they requested membership that under the law we had to allow them to become members if they were, and they were, because they were in the distribution field.

Turning to the second page of my prepared statement, particularizing on General Motors' growing concentration of power, I wish to just point out in generalities that we have people who are going to be very specific, that effective January 1, 1954, General Motors announced a major change in the distribution of replacement parts for all its vehicles.

On that date General Motors took the position that all of its 19,000 car dealers in the future should have a dual function, not only to consume and use GM parts, but to go out and sell GM automotive parts at wholesale to other repairmen. Under this plan all General Motors car dealers became wholesalers with no restriction on their receiving and wholesaling products of the AC Spark Plug Division and United Motors Service Division. In years prior, these divisions of General Motors had been established to sell certain General Motors products to the independent automotive wholesalers.

In the first public meeting announcing this program, held in Omaha, a representative of General Motors, one Charles Coker, after reading a telegram from the now deceased W. N. Potter, who was then general manager of United Motors Service, stated, and I quote:

Due to the various cease-and-desist orders in effect throughout the industry and the fact that there are so many interpretations of the Robinson-Patman Act, General Motors, in formulating this policy, has endeavored to set up a policy that will put all people in competition on an equal basis. While the aforementioned is not the basic reason for this new policy, it, at least, has taken the laws of our land in consideration. However, the primary reason for the new policy is that General Motors, having manufactured approximately 50 percent of all cars, trucks, and engines, feel they should make effective a plan to penetrate the replacement parts market they are rightfully entitled to.

Mr. McHUGH. Mr. Halfpenny, before this new General Motors plan was adopted on January 1, 1954, what type of restrictions existed on the General Motors dealers in wholesaling parts?

Mr. HALFPENNY. Up to that time the General Motors dealers did not receive products of their AC Spark Plug division and the United Motors Service division and, furthermore, they were not actively engaged in going out and selling their parts at wholesale. They did not have the price to do that.

Mr. McHUGH. Do I understand from this, then, that any parts which the car dealer was wholesaling up to this time, they were obtaining directly from the car division?

Mr. HALFPENNY. That is right.

Mr. McHUGH. They were not then obtaining anything from United Motors Service or from the AC Spark Plug division?

Mr. HALFPENNY. That is correct.

Mr. McHUGH. Is it true also that the car dealers were not obtaining for replacement purposes, selling it at wholesale, all of the equipment that was being manufactured by the car divisions?

Mr. HALFPENNY. That is correct.

Mr. McHUGH. Just certain standard lines?

Mr. HALFPENNY. That is right; and they were not at that time really going out pushing for this wholesale sales like they did as of January 1, 1954.

Mr. McHUGH. Up to that time the General Motors Corp. was content to get its distribution on those parts through—

Mr. HALFPENNY. Their own car dealers.

Mr. McHUGH (continuing). United Motors Service, their own wholesalers and jobbers?

Mr. HALFPENNY. That is correct.

Under this plan not only did the car dealers now have the General Motors parts to repair their own vehicles in their own shops but they required them to put in, requested them to put in, a stock of parts that they could go out and sell all the independent repairmen.

Mr. McHUGH. Now, by the independent repairmen, you mean the independent garages and filling stations?

Mr. HALFPENNY. That is correct, sir.

Mr. McHUGH. This line of customers, are they not in competition with the General Motors car dealers in selling at retail?

Mr. HALFPENNY. They are, sir, but they are selling them under this new plan.

Mr. McHUGH. So under the new plan they are now selling to a class of customers with whom they are actually in competition?

Mr. HALFPENNY. That is right, sir; and who heretofore had always been the customer of our independent wholesaler.

Mr. McHUGH. Excuse me, Mr. Halfpenny, but in connection with this statement, how do you construe this phrase "the replacement parts market they are rightfully entitled to?" What does that mean to you?

Mr. HALFPENNY. I do not think they are rightfully entitled to any market. But they construe that they believe that they are entitled, that they are making 50 percent of the automobiles and that, therefore, they should have 50 percent of all the repairs which means that the repairs of all General Motors cars should be sold through them.

I want to point out along that line that when they say they are rightfully entitled to it, you must remember that the vehicle manufacturers are merely assemblers of parts. They did not—if you would go into the background and history—this is not an invention of theirs.

The General Motors is an accumulation by merger and so forth of many years of various car assemblers, and the early background of the industry is such that the motor was made by Continental or some motor company, the parts were made by someone, and they took those parts and assembled them, and they still do that to a great extent; so we feel that this market they are not rightfully entitled to, this 50 percent.

Our people, our independent manufacturers, created many of these parts; they have developed them, and if you go back in early history, all the bumpers, the windshield wipers, the carburetors, the self-starters, all these things have been developed by our independent manufacturers and have been adopted and assembled on the vehicle by the major vehicle manufacturers, and our people have done the work on creating and perfecting those.

Mr. McHUGH. Are you saying by that that the only other competition which the General Motors Co. has in connection with the parts that are being sold for replacement comes from the independent manufacturers who are members of your association?

Mr. HALFPENNY. That is correct, sir.

Mr. McHUGH. Would not the other car manufacturers be competition for General Motors in connection with some of these parts?

Mr. HALFPENNY. They would not be because, for instance, Ford is interested in Ford parts. They compete at the vehicle level trying to have the consumer purchase a Ford rather than a General Motors product. But when it comes to the servicing of the parts, Ford only services Ford parts; they do not compete with General Motors on General Motors parts.

The same is true of General Motors as to Ford. The only people who supply competition to all those parts are our independent manufacturers. They make parts for all makes of automobiles and trucks.

Mr. McHUGH. So if there was to be competition in this field, the public will be dependent upon the independent manufacturers who would provide the competition for General Motors for these replacement parts?

Mr. HALFPENNY. That is correct.

If it were not for our independent manufacturers, there would be no competition on the replacement level. Each one would have their own exclusive market, Ford, Chrysler, and General Motors.

Continuing with my statement here, similar statements since that date have been made by officials and representatives of General Motors at various meetings throughout the country, that they felt they were entitled to this percentage of the overall aftermarket.

Mr. McHUGH. Were there ever any statements made, Mr. Halfpenny, that the General Motors Corp. expected as their rightful part of the market, that it would be the replacement parts on 50 percent of the total automobiles which General Motors Corp. makes?

Mr. HALFPENNY. That is right.

Not only the statement that I have read that Mr. Coker made, but they have made them at numerous public affairs throughout the coun-

try. I myself have not heard them, but I am sure they have been made.

They were made at their official welcoming just before the opening of the Powerama at Chicago in a breakfast that all the users of parts, and so forth, attended in Chicago. A representative of General Motors made the statement that they felt they were entitled rightfully to the replacement on the General Motors products.

Mr. McHUGH. Well, to obtain 50 percent of the replacement parts business would mean that the General Motors Corp. is seeking to obtain 100 percent of the replacement parts on their own cars?

Mr. HALFPENNY. That is correct, Mr. McHugh.

Mr. McHUGH. Have there been statements to that effect made by General Motors officials?

Mr. HALFPENNY. Yes, there have.

Mr. McHUGH. At the opening of the Powerama—

Mr. HALFPENNY. Yes.

Mr. McHUGH (continuing). Was this statement made?

Mr. HALFPENNY. I understood it was. I was invited, but I was not there, and I did not hear it myself, but I have been told it was made, and I know it has been made in various places.

Mr. McHUGH. Are you familiar with the name of the General Motors official who may have made such a statement?

Mr. HALFPENNY. I am not, except as to what I have testified here, because I have a transcript of Mr. Coker's remarks made in Omaha. I mean, you hear many things, and I cannot myself testify except what I have records to.

Senator O'MAHONEY. Mr. McHugh, have we obtained a copy of this transcript?

Mr. McHUGH. He has referred to it in his statement.

Mr. HALFPENNY. Yes, on page 2; that is right.

Senator O'MAHONEY. But that is only a paragraph.

Mr. HALFPENNY. I do have one that I can make available that outlines their plan on this Omaha speech.

Senator O'MAHONEY. I think it is important that we know what the plan was—

Mr. HALFPENNY. That is right.

Senator O'MAHONEY (continuing). As outlined by the spokesmen of General Motors.

Mr. HALFPENNY. I will turn that over to Mr. McHugh.

Senator O'MAHONEY. May I ask you then, who was Charles Coker?

Mr. HIGGINS. He was their territory or regional man, regional manager of that territory, in and around Omaha.

Mr. HALFPENNY. Of United Motors Service. He was substituting for the general manager, Mr. Potter.

Senator O'MAHONEY. Mr. Burns, on numerous occasions during the course of this hearing our witnesses on both sides, that is to say, the independents and the representatives of General Motors, have referred to regions and zones.

I think it is important for us to get into the record as clear a picture as we can of the regional system set up by General Motors and the other companies and associations that may be involved, and the zone, so that we may compare these regions and zones with the boundaries of the States.

Now, of course, the regionalization of Government began a long time ago; perhaps the earliest that needs be mentioned now was the creation of the Federal Reserve System, whereby the United States was divided into regions which included numbers of States, and there have been such regions established since then in Government.

In each case it has resulted in the transfer from the States to the regional centers, the Government officials whose activities concern the people of the States.

There were many debates about this in the Appropriations Committee in years past when we were asked to make appropriations to establish these regions. Senator Dirksen, I am sure, will recall on many occasions protest was made on behalf of the people of the several States upon the ground that when a Government bureau moved its headquarters from the State capital to some other city in the region, it made it more difficult for the people of the respective States, except the State which was the head of the zone or the region, to make contact with the Government bureau whose operations were of great importance to the people.

Now we see that same structure being formed in the automotive industry. We have seen drawn this morning a picture of some 1,200 independent manufacturers, most of whom were concentrated in Ohio, Michigan, Illinois, and Pennsylvania, now finding themselves in competition, so to speak, with a new regional system established by the big automobile manufacturers to govern their economic affairs, and from these regions there has been testimony, certainly in the letters that I have received from motor-vehicle distributors that are under the control of the zone managers and the regional managers who are the mediums through which the policy of the manufacturer is enforced upon the dealers—

Mr. HALFPENNY. That is correct.

Senator O'MAHONEY. So I think it is important to have this zone system and regional system clearly outlined in our testimony.

Mr. BURNS. We shall do that, Senator.

Mr. HALFPENNY. Some of our subsequent witnesses who are members of our association may be able to help you along that line, too, who are actually engaged in the business.

Senator O'MAHONEY. Proceed.

Mr. HALFPENNY. As a result of this plan of General Motors, innumerable General Motors car dealers put in inventories of replacement parts in the wholesale parts business in conjunction with their car dealership. There is no question that many were pressured into this activity.

Mr. McHUGH. Mr. Halfpenny, are there car dealers who would not be interested in engaging in this wholesale distribution program?

Mr. HALFPENNY. I would say from our discussion with our members and the field secretaries of NSPA, in talking to our members, that most of the car dealers were not interested in going into this business, because they are interested in a large sale of an automobile.

When you go into the parts business, you get into small sales of a few cents up to a few dollars involving technical skill and a large inventory, and most of them had to make a substantial investment or enlarge their premises so that they could take on this type of business.

It is a totally new type of business. They now, if they become wholesalers, have to put salesmen out calling on these independent repair shops, taking orders, bringing those orders back, and supplying those people with these small parts rather than selling automobiles or repair service.

Mr. McHUGH. Would this mean that car dealers are now being required to tie up a considerable amount of their capital in inventories of parts where they might prefer to have that capital in new and used cars?

Mr. HALFPENNY. From our information that is true. I think you will go into almost any large city now, and you will see a section of the car dealers, that they have a parts section with a counter and stools, and so forth, where people can come in and purchase these parts.

It is foreign to a great extent to their car dealership; the type of salesmen they have selling cars cannot sell parts. It is a new type of business.

Mr. McHUGH. Now, if many of these car dealers are not interested in this type of business because they are not set up or equipped particularly to function effectively, why would they want to go ahead with this wholesale parts program of the General Motors Corp.?

Mr. HALFPENNY. Well, I think your investigation in talking to car dealers is that if you have a franchise that you generally do what the major vehicle manufacturer suggests that you should do, and especially in recent years when a dealership has been a very economic aid to anyone in that business.

Mr. McHUGH. You are suggesting that the manufacturer has the authority to induce the dealer to participate in this plan by means of a threat of cancellation of his franchise?

Mr. HALFPENNY. Well, I do not think they will go that far. I think that they can do it in a better method than that. I think they generally can come in and say, "You have been very successful as a General Motors dealer. The corporation knows what is best for you and what we have decided is the thing that will make you money and that you should go into it," and indicate that they highly recommend it, and I say most of them would follow that recommendation; how much pressure there is, is hard to state.

Mr. McHUGH. Prior to the adoption of this plan, your jobbers or wholesalers were selling to the General Motors car dealers?

Mr. HALFPENNY. That is right. We still do to a certain extent, and that is where it is a difficult problem.

Our wholesalers now find that the car dealer who is not only a customer but a very vigorous competitor himself—that is the existing situation.

Mr. McHUGH. Do any of your members report that car dealers are unable to purchase from them because the General Motors Corp. has stepped up its sales program in the wholesale parts picture?

Mr. WIGGINS. We hear that, we hear that through the GMAC finance or finance company; they send out a report to the wholesaler and ask him how much business he does with his particular vehicle car dealer.

Senator O'MAHONEY. Now, may I ask you to make that a little bit more specific?

Mr. WIGGINS. Well, yes—

Senator O'MAHONEY. You say this car dealer.

Mr. WIGGINS. Yes; General Motors. I mean General Motors Acceptance Corp. sends to the independent wholesaler a credit reporting form, and on that form they list the name of a General Motors dealer. They have 5 or 6 questions in which they ask, "How much business do you do per month; how do they pay; is it satisfactory?" and everything else, and they are supposed to send that back to GMAC. Then GMAC—

Senator O'MAHONEY. That is a questionnaire coming from GMAC to an independent dealer?

Mr. WIGGINS. To an independent wholesaler.

Senator O'MAHONEY. An independent wholesaler.

Mr. WIGGINS. Yes.

Senator O'MAHONEY. He may or may not answer the question.

Mr. WIGGINS. That is right. Some of them do answer it. So if GMAC does not have that information on their own dealers and have to go to the independent wholesaler, it is kind of silly; so it has worked out that some of them have reported sales. All we have is hearsay on this, but the fieldman for the GM company comes in and says, "Why are you buying all of these parts from this independent wholesaler? We handle parts. You buy from us."

Senator O'MAHONEY. You say that you have this on hearsay?

Mr. WIGGINS. Yes, sir; I cannot get it in black and white. I may be able to get someone to come and testify to the absolute experience. There is one person in Washington.

Senator O'MAHONEY. Tell me why you say "hearsay"?

Mr. WIGGINS. Because I believe the only thing—I believe on something like this—is black and white, unless I am there myself and hear it.

Senator O'MAHONEY. But have you ever heard it from a wholesaler?

Mr. WIGGINS. Yes, sir.

Senator O'MAHONEY. And that is what you call hearsay?

Mr. WIGGINS. That is right.

Senator O'MAHONEY. But the wholesaler has not written it for you?

Mr. WIGGINS. That is right. I want him to write it to me so I could submit it to Mr. McHugh. I have submitted to Mr. McHugh their form that they use. I gave you one of those.

Mr. HALFPENNY. Senator, I ought to point out the difficulty of that is that our wholesalers still sell that car dealer on the local level some products, and he does not want to get that car dealer in difficulty and neither does he want to get himself in difficulty. But we, innumerable times, hear from whoesalers saying that for many years they may supply a Chevrolet dealer certain types of parts or a Buick dealer, and then a zone manager will come in and tell that Chevrolet dealer, and so forth, "We have a division selling these parts. Why are you buying all these parts from outsiders?"

And he will be informed that from now on they have got to cut down on what they are buying, but he still does some business with them, and he does not want to get into controversy.

Senator O'MAHONEY. What I am trying to get into the record—

Mr. HALFPENNY. That is our problem.

Senator O'MAHONEY (continuing). Is whether or not this information which you have now given the committee has been given to you by the individuals concerned.

Mr. HALFPENNY. That is right, sir.

Senator O'MAHONEY. Orally.

Mr. HALFPENNY. That is right; and some of them have also given—

Mr. WIGGINS. Yes, sir.

Mr. HALFPENNY. Some of them have given information to the Government, such as the Federal Trade Commission, on innumerable occasions.

Senator O'MAHONEY. But they are reluctant to put it in black and white?

Mr. HALFPENNY. That is correct, sir, because, say, you are selling a Chevrolet dealer, and you are not getting any Chevrolet parts or General Motors parts. That Chevrolet dealer often does repair on Ford or Chrysler or some other make of car. He then will buy those parts from our independent wholesaler. Therefore, he is a customer, and our man does not want to lose that business. I am sure you understand the problem facing us.

Senator DIRKEN. Mr. Halfpenny, is there any dealer franchise that requires purchases of parts at the same time, that you know of?

Mr. HALFPENNY. I think that has been eliminated, Senator, in their franchise dealership.

Years ago it may have been in there, but in recent years because of court decisions it is illegal to put them in the dealership, and I would say that it is not in the dealership now. It is done by other methods, Senator. Their zone manager calls on these people. In most zones, as I understand it, General Motors will establish a large parts depot that will service that area, and they will have these zone men going out to see that their dealership does take this material from them.

Senator KEFAUVER. Mr. Chairman, may I ask a question?

Have you stated what percentage of the General Motors dealers go into this parts business? Do all of them do it?

Mr. HALFPENNY. They do not, sir. In fact, apparently, from what I will further testify, they did not find that as being completely successful, so in mid-1954 they adopted a new plan; but a number of their dealers did. But I do not know what percentage. There is no way of our knowing that.

Senator O'MAHONEY. Well, you stated in your testimony, before Senator Kefauver came in—this is at the top of page 2—you were talking about what happened on the 1st of January 1954.

Mr. HALFPENNY. That is right.

Senator O'MAHONEY. You said:

On that date General Motors took the position that all of its 19,000 car dealers in the future should have a dual function not only to consume and use GM parts but to go out and sell GM automotive parts at wholesale to other repairmen.

In that statement you said the direction from General Motors was to all of their dealers.

Mr. HALFPENNY. That is correct; and I cannot tell you whether all of them have taken it on. I would assume that all of them have not, but a great number have. How many have, I could not testify to.

Senator O'MAHONEY. It is not yet 2 years since this policy was announced.

Mr. HALFPENNY. That is right. But a substantial number have in that period; yes, sir.

Mr. McHUGH. Mr. Halfpenny, excuse me, does this credit information which GMAC has requested of your wholesalers include information concerning the volume of purchases by the car dealer from your members?

Mr. HALFPENNY. That is correct.

Mr. WIGGINS. Yes.

Mr. McHUGH. Would it indicate the manufacturing sources of such parts?

Mr. WIGGINS. No. But we understand they have a form they have to fill out once a month of all the parts that they buy from outside sources, and that would have the listing. The car dealer has to fill out that form and send that back to Detroit.

Mr. McHUGH. Was it your belief that from these credit reports General Motors or GMAC would be able to determine something about the volume of purchases which the car dealer is buying from independent sources?

Mr. WIGGINS. That is right; no question about it.

Mr. McHUGH. Not GM?

Mr. HALFPENNY. That is right.

Mr. WIGGINS. Those are the only questions they ask. It is of a Chevrolet dealer or Pontiac dealer they ask that specific question, and send it to this wholesaler, and they list the car dealer's name there, and they send it back with their name signed on it, the wholesaler's name signed on it.

Mr. McHUGH. Is not GMAC a wholly owned subsidiary of the General Motors Corp.?

Mr. WIGGINS. That is correct.

Mr. McHUGH. If they were seeking credit information on their dealers, wouldn't that information be available to them directly?

Mr. WIGGINS. I would think so; they would have more information than Dun & Bradstreet. If they do not know the credit situation of their dealers, who they are selling to, their dealers, and have to come to a wholesaler and ask him about a hundred dollars worth of purchases, when they are selling \$4,000 automobiles, that does not seem feasible either.

Mr. McHUGH. Some of your wholesalers do refuse to answer these reports?

Mr. WIGGINS. Yes, sir; they do.

Mr. HALFPENNY. Most of them do now.

Going along in my statement here, I say, however, General Motors Corp. was not yet satisfied with the great volume of replacement business it was now obtaining through their car dealers so, in mid-1954, in its constant drive for an even greater share of replacement parts volume, General Motors Corp. announced a new, drastic, policy change.

The sale of fast-moving parts manufactured by General Motors Corp.—these are things they manufacture themselves which we commonly call captive parts—including transmissions, steering, brakes, bumpers, grilles, body hardware, and batteries, previously sold exclusively through General Motors car dealers and truck dealers, was promoted through certain selected independent wholesalers. These selected wholesalers are sold what is called a GM package deal, vary-

ing in size from \$10,000 to one-half million or more, with the right to return all unsold merchandise up to 12 months from date of purchase.

We have been advised that General Motors Corp. plans to select approximately 1,200 of the independent wholesalers throughout the 48 States, which I say, many of them are our members, to handle this new distribution plan. About 600 to 800 wholesalers have already taken on the plan.

Senator O'MAHONEY. Do you mean to infer from this statement about "selected wholesalers" that only those wholesalers whom General Motors picks out are permitted to purchase parts from General Motors?

Mr. HALFPENNY. They are selecting the ones that they are going to offer this to; yes, sir.

They go into each State and try to pick out what is generally the larger one or the more prominently known one, and tell them that they will make available to them for the first time all of General Motors parts, and that is a complete line.

Now, that will be in direct competition with the independent parts that that wholesaler is selling, and they will put in that package deal, depending on the size of the store, the size of the location, they will tell them what they should have in this package and how much, and they will ship it to them.

They then give them the right to return any merchandise that is shipped to them in that package deal up to one year.

Senator O'MAHONEY. Well, no other wholesaler, save those who are selected, can purchase these parts?

Mr. HALFPENNY. That is right; that is correct.

Senator O'MAHONEY. This, however, is extending the distribution from the United Motors Service—

Mr. HALFPENNY. That is right.

Senator O'MAHONEY. To wholesalers; is it not?

Mr. HALFPENNY. That is right.

For instance, Senator, some of the United Motors Wholesalers that have in past years had this United Motors Wholesalers deal of General Motors may or may not be selected for this new package deal.

For the first time these items, which are commonly known as crash parts, which is a very important piece of business, grilles, and things that General Motors does manufacture, no independent manufacturers, that is being made available to the selected wholesalers, plus they give them a whole duplication of lines from the same type of merchandise, and in many instances from the same manufacturer that this independent wholesalers is buying directly from the manufacturer, only it is in a General Motors box.

Senator O'MAHONEY. Then it includes not General Motors parts alone, but parts manufactured by independent manufacturers?

Mr. HALFPENNY. That is right; that is in a General Motors box.

Senator O'MAHONEY. Now, these parts may be used for the repair of other makes of automobiles than the General Motors line?

Mr. HALFPENNY. Their full line there. That manufacturer will make that General Motors part, but a General Motors part may not fit a Ford. But that independent manufacturer will supply that wholesaler with a complete line, the General Motors parts, Ford and Chrysler, but the General Motors parts in some instance will be identical to the one General Motors is getting, except it is in a box.

Senator O'MAHONEY. I understand you to say, Mr. Halfpenny, that the General Motors package included not only parts for General Motors cars manufactured by General Motors, one of the General Motors divisions, but also contained parts manufactured by independent manufacturers. What I want to know is whether those parts manufactured by the independent manufacturers included parts for other cars than General Motors.

Mr. HALFPENNY. No, it does not, Mr. Chairman. General Motors just gives it for their own parts.

Senator O'MAHONEY. Fine; all right.

Mr. McHUGH. Mr. Halfpenny, do I understand that you are saying before the modification of this plan you just described here, the so-called captive parts or parts manufactured exclusively by General Motors Corp., were not made available to independent wholesalers?

Mr. HALFPENNY. That is correct.

Mr. McHUGH. Those parts then were distributed only to General Motors car dealers?

Mr. HALFPENNY. Correct.

Senator O'MAHONEY. Why do you call this drastic?

Mr. HALFPENNY. Well, it was drastic because of the fact that looking ahead, and even at the moment, the independent wholesaler has been buying—let us take his gaskets, or his piston rings, or any of those items—from an independent manufacturer.

Now, if he takes on this package deal, he also has maybe the same commodity, the same product, in a General Motors box, so his salesmen going out now are carrying the General Motors product; they are also carrying the independent parts manufacturer's product for the same vehicle; and he now though can sell the car dealer, General Motors car dealers, a General Motors part which he could not do before.

Looking ahead, it seems to me that they have put their foot in the door as far as the independent market is concerned, that they can get strong enough so that they can almost dictate the terms; eventually that is going to occur as far as the independent wholesaler is concerned.

Senator O'MAHONEY. If I understand you then, you mean the result of this package deal will be that the selected wholesalers selected to handle the package deal for General Motors would deprive the independent wholesalers and, therefore, the independent dealers, of the opportunity of selling General Motors parts which are not included within the description of the captive parts?

Mr. HALFPENNY. I think that is a correct statement; yes, and it provides for the first time many of the independent garagemen who might not want to buy from the car dealer, who is his competitor, he has been used to buying from our independent wholesaler, and so he has a more ready entree into that independent repairman.

Mr. McHUGH. Mr. Halfpenny, cannot United Motors Service wholesalers still elect to take only certain parts of a General Motors line and refuse to take on a package deal?

Mr. WIGGINS. We understand now they can, but we understand originally it was the package deal. We understand now there are certain parts of the line, of the package, they can take, although we have nothing in writing, I have not seen anything; in the original form it was for all the automobiles listed in the original contract, in

the UMS-General Motors contract, but we understand now they are trying to get—you can handle certain lines like, we will say, Chevrolet and Cadillac, and things of that kind, certain parts. I do not know. Maybe some of these other witnesses who are in the business can tell you more about it.

Mr. HALFPENNY. I believe they are tailoring it to take whatever part of the market that individual will give them.

Mr. McHUGH. I assume with reference to this, the big package deal. United Motors Service, General Motors, would be attempting to interest the larger, the bigger, wholesaler?

Mr. HALFPENNY. That is correct.

Mr. McHUGH. Do any of your manufacturer members complain that the effect of this policy has been to foreclose them from access to this portion of the market?

Mr. HALFPENNY. It has only been in effect approximately a year, and it is difficult to say. But some of them feel that they have lost a certain percentage of General Motors replacement—a certain percentage of the volume of General Motors repairs that they previously were getting.

Mr. McHUGH. They still have other outlets open to them; do they not?

Mr. HALFPENNY. That is right, sir. They are the smaller and more expensive to serve.

Mr. McHUGH. This would have the effect of committing the larger manufacturer to United Motors Service and, therefore, narrowing the market for this portion of the market from your independent manufacturer?

Mr. HALFPENNY. Yes, it could; and I think it will.

It has not been in effect long enough to know the full result. Ten, twelve months are not very long in a complicated industry such as this. Shall I proceed?

Mr. McHUGH. You may continue, Mr. Halfpenny.

Mr. HALFPENNY. I ought to point out that this is a really complicated distribution market, and even someone like myself who has been representing it for 20 years, you run into complications that are hard to explain; you almost have to live with it to know the real problems that are involved. We are just trying to give you the best we can, some of our findings.

To continue with this, thus General Motors Corp. has now accomplished a dual distribution of all GM parts, not only to and through its car dealers, but also now through the independent wholesalers selling GM parts to the car dealers' competitors, the independent garagemen and repairmen. The primary purpose, of course, is to completely penetrate the market and secure the greater share of the replacement-parts business.

Senator O'MAHONEY. On of the reasons that I was so interested in asking for a copy of the report of Mr. Charles Coker, one of the regional officials of General Motors at the first public meeting early in 1954, was to get a clear understanding of why General Motors, in its own explanation, has undertaken this system.

I think Mr. McHugh may be about to ask some questions with respect to this. If so, I apologize, Mr. McHugh.

Mr. McHUGH. Go right ahead, sir.

Senator O'MAHONEY. But the very first sentence in the quotation from Mr. Coker that you have on page 2 read as follows:

Due to the various cease-and-desist orders in effect throughout the industry and the fact that there are so many interpretations of the Robinson-Patman Act, General Motors, in formulating this policy, has endeavored to set up a policy that will put all people in competition on an equal basis.

That is the end of the sentence.

Mr. HALFPENNY. That is right.

Senator O'MAHONEY. Now, the cease-and-desist orders to which reference is made in this sentence are the orders of the Federal Trade Commission.

Mr. HALFPENNY. That is right.

Senator O'MAHONEY. We had testimony last week with respect to some of these orders which were sustained.

In other words, the cease-and-desist orders of the Federal Trade Commission were legal after having been tested in the courts?

Mr. HALFPENNY. Right.

Senator O'MAHONEY. So this sentence bases the change of policy upon the various cease-and-desist orders in effect throughout the industry?

Mr. HALFPENNY. That is right.

Senator O'MAHONEY. It is, therefore, very important for this committee to know whether or not this new system has, in fact, circumvented the cease-and-desist orders.

They were issued on the ground that the practices theretofore followed by General Motors were such that they could substantially lessen competition. The purpose of the law, of course, is to maintain competition.

Mr. HALFPENNY. That is right.

Senator O'MAHONEY. Now, if the General Motors Corp. is seeking to evade those cease-and-desist orders, it is difficult to understand what the author of this statement, Mr. Coker, meant when he said that in putting this new system into effect, General Motors "has endeavored to set up a policy that will put all people in competition on an equal basis." Apparently "all people" does not include the wholesalers, who are not selected wholesalers.

Mr. HALFPENNY. That is correct; that is why I used that whole interpretation. I just do not know what they meant myself. These orders so far have been, although sustained by the courts, have been ineffective as far as preventing the continued growth and taking over of this replacement market is concerned.

Senator O'MAHONEY. And it is also important to find out what was meant by "competition on an equal basis."

Mr. HALFPENNY. That is right.

Senator O'MAHONEY. If the independent manufacturers are included among "all people," and one would imagine that they were, it is difficult to see how competition was being maintained for them by this new practice which, you say, was made more drastic in the middle of 1954 or approximately 6 months after it was first announced.

Have I correctly summarized the situation?

Mr. HALFPENNY. You correctly have summarized it, Senator, and I think the answers to those questions would be most interesting; that is correct.

Senator O'MAHONEY. You referred in your testimony, Mr. Halfpenny, on page 2, to the fact that Mr. Coker made this statement after—

reading a telegram from the now deceased W. M. Potter, general manager of United Motors Service.

Do you have a copy of that telegram?

Mr. HALFPENNY. The telegram is in this copy of the transcript that I will give you.

Senator O'MAHONEY. It is in this transcript that you have agreed to provide us?

Mr. HALFPENNY. Yes; that is right.

Mr. Potter merely stated that he regreted that he could not be there to tell this personally to these people assembled, and that he asked—this man was fortunate that he could tell them the good news.

Senator O'MAHONEY. So that he sponsored the message given by Mr. Coker?

Mr. HALFPENNY. By Mr. Coker; he was appearing from this telegram to point out—as we point out, in his place and stead.

Senator O'MAHONEY. Go ahead.

Mr. McHUGH. Mr. Halfpenny, can you tell us whether or not the discounts granted to General Motors car dealers under this United Motors Service, General Motors plan, enables General Motors car dealers to undersell or gain any competitive advantage over the wholesalers who were members of your association when they compete with them in reselling to the independent garagemen?

Mr. HALFPENNY. That is a difficult question to answer. I would say that the way the price structure is set up that they cannot do it. But I wish to point out specifically that on those items that General Motors has, as I point out in my testimony, in which they have competition, where it is highly competitive, such as the muffler industry, or so forth, they will grant—they have a price list—then they grant so much off the list price. In many instances it is 50 percent discount, which is actually a hundred percent on these things that are highly competitive.

On those items that are captive parts which they control they only will give a discount of 15, 20, or 25 percent, and they control the list price, so that the consumer in that instance—the prices are often increased, and the long discount is not given on those noncompetitive prices, which puts the independent manufacturer at a great disadvantage. He has to meet whatever that long discount may be, and there are only so many cents in each dollar, and if you give 50 of it away at the start it makes it very difficult.

Mr. McHUGH. Well, are you suggesting that the General Motors Corp. pretty much sets the price structure to the independent manufacturer on replacement parts?

Mr. HALFPENNY. I previously testified saying that is true, and that is true, because of their tremendous advertising, television, radio, many things you have to meet their price—I mean, they set the price, of necessity, whether they manufacture it or not. Whatever they set up as a list price, you will have to meet that or you will not do business.

Mr. McHUGH. That is your position then, that with reference to the so-called captive parts which General Motors manufactured, and

which they have no competition in, the discounts are lower to the jobbers, and the General Motors' profits on such items are greater?

Mr. HALFPENNY. That is right.

I would just like to read here, and I will answer that.

As explained in my previous testimony, General Motors Corp. establishes the list price for parts, and historically the independent parts manufacturer has had to follow those list prices. It is quite noticeable that on the replacement automotive parts that are highly competitive, where there are strong independent manufacturers active in the business, there has been no appreciable change in General Motors' pricing—even in the face of increased costs of labor and materials.

On the other hand, on those parts in the General Motors line that are more or less captive items, or where GM has acquired a substantial percentage of the market such as its Delco-Remy Division line, that is, ignition.

General Motors has substantially increased its list and net prices, resulting in substantial profits on such captive items.

The question immediately comes to one's mind: Are unreasonably high profits made on GM's captive parts, and used to stifle the competition of the independent manufacturers and distributors of the non-captive parts?

While I have not made a detailed comparison, I believe it would be very interesting and enlightening for all if this committee were to go back 2 years and study increases in list prices that General Motors and United Motors have put in effect on Delco-Remy and the captive lines in comparison with increases in list prices on highly competitive lines such as exhaust system parts, for example.

Senator O'MAHONEY. What you are saying, Mr. Halfpenny, if I understand you, is that the practice which General Motors has put into effect with respect to these captive parts and the wholesale dealers, is to increase the price on the parts manufactured by General Motors but not by the independents?

Mr. HALFPENNY. That is right.

Senator O'MAHONEY. And not to increase the price on the parts which are competitively manufactured by General Motors and the independent manufacturers?

Mr. HALFPENNY. That is correct; and I think a study would show that very clearly; and I think if you took certain Delco-Remy parts, which are ignition, that they have almost exclusives on because they are expensive parts, that the increase percentagewise has been very, very much larger than on those items that are highly competitive.

One other interesting thing they do on their captive parts for distribution, that is when the wholesaler sells that to the repairman, what his margin is to be for that, the increase in price, that is very small, the discount on captive parts; while on the captive parts it is very large and, naturally, the competitor must meet that 50 percent off list, while on their own items from 15 to 25 or 30 is their largest; most of them are 20 or 25 percent.

Senator O'MAHONEY. Thank you, sir.

Senator KEFAUVER. Mr. Chairman, what the witness is really saying is that on the competitive parts they cannot raise their price to the proportion, the same proportion, that they can on captive parts; is not that the situation?

Mr. HALFPENNY. That is correct, or they do not wish to do it, because it makes it more difficult on the competitor either way, but I think primarily what you say is correct. By our independent manufacturer being competitive, those prices are kept down.

Senator KEFAUVER. Well, it is not generosity on their part that they do not raise the prices on competitive parts.

Mr. HALFPENNY. It surely is not indicated by what they do on their captive parts; that is right.

Senator DIRKSEN. Mr. Halfpenny, what is the annual dollar volume in the parts business?

Mr. HALFPENNY. It is about \$2½ billion. Now, we cannot tell you exactly what percentage the independent does and what percentage General Motors is getting, it is so large and complicated, but our trade publications indicate that it is approximately \$2½ billion, going up each year very rapidly.

Senator O'MAHONEY. It is a substantial business rather than a small local business?

Mr. HALFPENNY. It surely is, Mr. Chairman.

Senator O'MAHONEY. And when \$2½ billion worth of business finds itself, as you have testified, in danger of being pushed out of existence, it is something which requires the attention of the national lawmakers.

Mr. HALFPENNY. Senator, we have come to the conclusion that that is the only place that we can get relief. We have attempted over the many years appearing many places and under the existing antitrust laws we have been unsuccessful, and the market, as far as the independent is concerned, their problems are increasing instead of decreasing.

Senator O'MAHONEY. You cannot get relief from the States——

Mr. HALFPENNY. No, sir.

Senator O'MAHONEY (continuing). Because the States have no jurisdiction——

Mr. HALFPENNY. Right.

Senator O'MAHONEY (continuing). Over interstate commerce. Therefore, if you are entitled to relief, you must come to the national lawmakers.

Mr. HALFPENNY. That is right; and that is why we are here, and we appreciate this opportunity of being allowed to be heard. We have a number of witnesses from the industry.

Senator O'MAHONEY. If the national lawmakers do not give the relief that you request, then the pattern which the large integrated corporations like General Motors lay down will be the rule governing commerce among the States——

Mr. HALFPENNY. Right, Mr. Chairman.

Senator O'MAHONEY (continuing). Which, by the Constitution, was vested in Congress.

Mr. HALFPENNY. We are rapidly coming to a place where, in my opinion, in this vehicle industry that the public, through you people, elected officials, are going to have to decide whether they are going to have this complete business, not only the sale, the manufacture and sale of vehicles, the financing of them, but the repairing and servicing of all those vehicles—I mean that is the way it is tending—and with every person in this country dependent upon an automobile for trans-

portation, it is something that assumes serious consideration by everyone.

There is not any question but the vehicle manufacturers have done an outstanding job in putting cars on the road. But now are they entitled after you buy a car, that you are a captive of that corporation the balance of your life? Because a car is a necessity, most people buy it on time, and if they are going to have to buy all the repair parts and service through that corporation, you are going to be mortgaged to them for the balance of your existence; and I feel that it is these independents and these small repair shops that have done the outstanding job in the country.

All the real developments in the industry have come from these independents working in backroom shops, and these alley garagemen, and so forth; they are the ones who made this industry great, and have kept these cars moving.

If this continues they are going to be put out of business, without any question.

Senator KEFAUVER. Mr. Chairman, I have not been able to hear all the witnesses, but is this witness going to testify as to the number of independents that have had to go out of business, or what the reduction in competition has been, or will some other witnesses go into that?

Mr. HALFPENNY. I will not, Senator; and I would say at the moment that that has not occurred in great numbers because of the fact—you must remember—that there was a great backlog of necessity of new cars and repair of cars after the war, and none of them have been able to handle all of this; and so the full impact of what General Motors is doing in this replacement field has not been felt as yet, and I feel that it will not be felt for several years ahead of time, but in the future. But the picture is being set up.

Senator KEFAUVER. Mr. George Pepperdine, what was his company or companies?

Mr. WIGGINS. Pepperdine?

Mr. HALFPENNY. Pepperdine? I do not know him. It may be true in other industries. They have stepped into other industries where there has been a serious change, and there have been serious changes, but I am just speaking of automobile replacement.

Senator KEFAUVER. I was going to ask, I thought Mr. Pepperdine was the head of one of the large parts companies and he lost his business as a result of this competition.

Mr. HALFPENNY. I am not acquainted with him, Senator.

Senator KEFAUVER. I am talking about the man who was the founder and the sponsor of the George Pepperdine College in Los Angeles. Wasn't that automobile parts?

Mr. HALFPENNY. I do not believe so, Senator. I thought I knew all of them, especially anyone that was important enough to back a college, but I do not happen to know him. Do you know him, Mr. Wiggins?

Mr. WIGGINS. No.

Senator O'MAHONEY. Facetiously speaking, having been a captive member of this committee since it was initiated and sitting in on most of the studies which have been made, I think it may be appropriate to remark, Mr. Halfpenny, that your testimony just now harmonizes completely with what has been told to us in the past, even beginning

with Judge Barnes, the head of the Antitrust Division of the Department of Justice, when he testified several months ago, that certain mergers in the automobile field were approved. That is to say, when the companies, the smaller companies, laid before the Department of Justice their plan to merge, the Department of Justice said, "We will not prosecute such a merger because we believe that it will be an aid to competition," the theory being that if Nash and Hudson were not permitted to merge neither one of them would be able to survive; the same with respect to Studebaker and Packard.

Now, you were correct in saying that when the war ended, there was a great pent-up demand for new automobiles. Kaiser, recognizing that pent-up demand, came out with an utterly new car and sought to manufacture it in great quantities.

It did not stand up very well and had to be in one of these mergers. But that pent-up demand resulting from the war orders which required metal to be used for the manufacture of war machines instead of automobiles and trucks, has now been filled. What you are talking about and what this committee is talking about is what is going to happen in the future.

Mr. HALFPENNY. That is right.

Senator O'MAHONEY. It is clear that there is a great competitive fight between General Motors and Ford. Nobody knows what the result of such a conflict may be, but it is altogether clear, because the automobile industry is a national industry affecting not only wholesale parts dealers and retail parts dealers and car dealers and manufacturers, but also every individual car owner in the United States, what is to be the future for those individual purchasers is involved in the facts which we are trying to lay on the table in this committee hearing.

If it should come about that only one or two great motor companies should survive and should have the complete control of the manufacture of parts, the distribution of parts, the repair of automobiles, then we would have a concentration in this industry such as has never before existed.

Mr. HALFPENNY. That sums it up correctly and it is coming very rapidly; that is a decision that is imminent, I feel.

Senator KEFAUVER. May I ask the chairman, in his great experience, if he has not found that in other industries where all but two or three are driven out, that while there might be competition for a time, that sooner or later they seem to settle down to some understanding?

Senator O'MAHONEY. They find a way to understand what the price shall be without any written document.

Mr. HALFPENNY. I would like to point this out—the chairman raised a very interesting point. Our independent wholesalers and manufacturers feel that they have an obligation to the public, and all of you people have constituents that have many of these old makes of automobiles, say the Kaiser that is no longer manufactured, and so forth, back to model T's, and some of these engines are taken off the road.

We feel an obligation that we have to service those, and we do supply parts. To do a job, many of our people carry, for instance, in the piston ring line, as many as 15,000 items. Many of those are very slow moving items, and they feel that that is a service that is of necessity.

The vehicle manufacturer is not interested in those old automobiles. We feel an obligation to do that, and have done it for the consuming public.

Senator O'MAHONEY. That is one of the reasons why the bluebook value of old cars has gone down very rapidly, even though because of this competition of which I speak, the dealers are now finding themselves forced to give increased credit upon the old automobile, a credit far greater than the bluebook value—

Mr. HALFPENNY. That is right.

Senator O'MAHONEY (continuing). All of which leads to inflation.

Mr. HALFPENNY. That is right.

Mr. WIGGINS. Senator, I think it is important, too, to know that 1 out of every 7 persons is engaged in the automotive industry; 1 out of 7.

Senator O'MAHONEY. What is your authority for that, Mr. Wiggins?

Mr. WIGGINS. Well, Professor Davidson's book on the Michigan study, and the Chilton publications, the automotive publications, who have made a study.

Senator O'MAHONEY. That is to say, in the—

Mr. WIGGINS. In the entire industry.

Senator O'MAHONEY (continuing). The industry press, and the professorial studies of the industry?

Mr. WIGGINS. That is right.

Mr. HALFPENNY. They estimate that 1 out of 7 people in the United States in one manner or another make their livelihood out of the automotive industry.

Mr. WIGGINS. In some little communities, I mean, their whole community is dependent upon that parts manufacturer; he employs practically everyone in that community, the independent parts manufacturer. If he goes, so does his community.

Mr. HALFPENNY. Going back to my statement, I say it is our studied opinion that the vehicle manufacturer, with full knowledge, obtains discriminatory prices when purchasing products for use on original equipment, part of which he subsequently sells in competition with the independent warehouse distributor, wholesaler, and jobber in the replacement and service market.

As I previously pointed out, there is no question that there is healthy competition between the three major car manufacturers at present in the sale of automobiles. But they do not compete with one another in the sale of repair parts for one another's vehicles. The only competition in the manufacture and distribution of repair parts for a Chevrolet comes, not from Ford or Chrysler, but from the independent parts manufacturers. The same is true with all vehicles. The competition of the independent parts manufacturer and distributor must be preserved, or each vehicle manufacturer will have a complete monopoly in the sale of replacement parts for his own vehicle.

We do not believe that big business is the natural enemy of small business or that one prospers only at the expense of the other. However, in the case of the major vehicle manufacturers, and especially General Motors, it would seem that now is the time when this Nation must decide whether the major vehicle manufacturers are to have complete monopolies in the manufacture, sale, financing, and repairing of their motor vehicles and trucks, or whether it is time to invoke

divestiture proceedings limiting General Motors and the other major vehicle manufacturers to the manufacture and sale of automotive vehicles and trucks, leaving the manufacture and distribution of replacement parts and the repair, maintenance, and service of these vehicles to the independent service industry to provide such service more competitively, efficiently, and less expensively; and in that, Senator, I feel that there have been divorcement and divestiture proceedings instituted in industries that did not affect the public nearly as much insofar as this automotive industry is concerned.

We recently in the past number of years had it invoked as far as the Pullman Co., which in no manner affected the great consuming public as we do in this automotive industry, and it seems—we have given it a great deal of thought—it looks like, in our opinion, that is the only possibility you are going to keep this repair and service industry alive, some such proceeding as that.

It is beyond the ability of any one industry, individually or collectively, through our trade associations, to do much about it, and the only one we can turn to, we feel now, is the Government. Up to date the Government has been very ineffective, I must report.

Senator DIRKSEN. Mr. Halfpenny, it would occur to me from the standpoint of volume and distribution that, perhaps, the most comparable industry would be the farm-machinery industry. Does a comparable situation obtain there or not?

Mr. HALFPENNY. It is not nearly as concentrated, Senator, in the farm-machinery field, and the farm-machinery people do a great deal of servicing their own equipment. Our people do some of it.

But in those instances those people invented and created that machinery, and I think that in that instance they are more entitled to the repair and servicing of it, the reaper and all the cornpickers; those things were invented by those people that sell them.

That is not true of General Motors. They have assembled parts made by these hundreds of independent manufacturers, and now say, "that because we have assembled it, you people are not entitled to this repair service."

But that industry would come as close in magnitude, I would think, as many other businesses I know.

Mr. McHUGH. Mr. Halfpenny, is it your belief that the General Motors Corp. makes a higher profit on the so-called captive products where they have no competition and this, in fact, is being used to subsidize their operations in those areas where they are getting competition?

Mr. HALFPENNY. That is my thinking; yes. There is no way of knowing that without—the way they put out their balance sheets, and so forth, you cannot find how much they are doing it in replacement business, but that would be my position; yes.

Mr. McHUGH. Do you think this is part of a deliberate attempt to exert pressure upon the independent manufacturer and his wholesaler in that area where the General Motors competition is competing with them?

Mr. HALFPENNY. That is right.

I think the end result of true competition is to become a monopoly; I mean, you compete to put everybody else out of business, and that is

where the Government must step in some place to keep some competition going, and they are only doing what is the natural thing to do.

They see a soft market or a market they can move in, and they have the power to do it, and they are going to do it as long as they can, and unless Government decides what they are going to do, I cannot see where it is going to be stopped.

Mr. McHUGH. Mr. Halfpenny, is there generally a substantial difference between the price at which General Motors purchases parts and equipment for original equipment as against replacement purposes?

Mr. HALFPENNY. In many instances there should be, but there may not be.

We have no objection in the replacement industry of how cheap they purchase it for original equipment. In fact, I think that is necessary to put the car on the street.

But when they go into the replacement market they should have to pay the same as the independent wholesaler for those replacement parts, except whatever difference they could cost-justify.

But we feel in many instances they are diverting parts that they bought for original equipment at a low price into the replacement market in competition with the independent wholesalers that purchase at a higher price.

Mr. McHUGH. They are diverting that into the replacement market through United Motors Service or the AC Spark Plug line?

Mr. HALFPENNY. And now they will do it through this GM package deal.

Mr. McHUGH. Well, now, does the United Motors Service or AC Spark Plug acquire items directly from the manufacturer for original equipment? What I am trying to figure out is how does UMS or AC Spark Plug get such equipment?

Mr. HALFPENNY. They get that through the corporation, and on most of it the corporation purchases everything, and then will send it to the divisions.

Mr. WIGGINS. UMS is merely a sales agency.

Mr. McHUGH. What you are saying is that United Motors Service would have this equipment bought by the original car division, shipped by the car division to United Motors Service, and then redistributed?

Mr. HALFPENNY. That is right.

Some items are boxed by General Motors and some are not boxed at all.

As you read the testimony in the Federal Trade Commission case in the spark-plug cases, all spark plugs were shipped to them in egg crates, and you did not know whether they were going into original equipment or replacement, and there was some difference if they would box those for replacement, there was some difference.

Mr. McHUGH. Mr. Halfpenny, what evidence do you actually have that the General Motors Corp. is purchasing equipment for original purposes and is diverting that into the replacement market?

Mr. HALFPENNY. I have no testimony on it. There is no way that we in the independents can obtain that nor is there any way for an independent manufacturer to determine that. Say that you are manufacturing some item that is in the replacement field. Let us take as an example a muffler. It is very important that you get that muffler

if you are an independent manufacturer on a Chevrolet or a Buick or something because of the advertising possibilities.

So General Motors may go to 4 or 5 muffler manufacturers and order a half million mufflers, and they do not tell them whether it is going on original equipment or replacement, and they get that reduced price on original equipment, and if they only manufacture a million of those cars and they have purchased a million and a half for original equipment, you know a half million of it is going to be diverted into replacement. But there is no way that the individual manufacturer can know that because he will split his order up maybe among 3, 4, or 5; they will none of them get the full run.

Mr. McHUGH. Would not the independent manufacturer know pretty well what the potential is going to be each month for cars the General Motors Corp. is going to make?

Mr. HALFPENNY. No. They will be placing orders now for delivery next year, and they will tell you how you are going to deliver so many each month, and so they will know that their amount is not enough to supply all the cars. That is as far as they can go. And, of course, those manufacturers if they got together comparing notes then they would be in violation of the antitrust law.

Mr. McHUGH. As long as General Motors Corp. is purchasing these parts from several different sources, any one manufacturer would not know what the needs are going to be for original equipment.

Mr. HALFPENNY. That is right; because he is not getting all of them. He is just getting a small piece of it, and very happy to get it, I might add. I mean, it is very important to his lifeblood that he get it not only for keeping his plant going but the fact that he can advertise and his wholesalers can say that it is used on the original piece of equipment.

Mr. McHUGH. Do these independent manufacturers attempt to determine from General Motors Corp. how much they are actually going to use in original equipment?

Mr. HALFPENNY. I cannot answer that, but the best I can find out, most of them go as supplicants with their hats in hand attempting to get the order.

Mr. McHUGH. And they are glad to take it on any basis they can.

Mr. HALFPENNY. And you have to, if you are going to get it in most instances.

Mr. McHUGH. Well, do your jobbers sometimes report that the General Motors car dealer in wholesaling some of these parts is able to undersell him as a result of being able to get apparently original equipment prices?

Mr. HALFPENNY. The price problem has not been too serious; no. It is the fact that they say that it is an original part. It is the General Motors part, it is genuine, on the box. Those are the things that are more important than the price.

If you are a car owner and you pull up to your garage and they say—you know, you are driving a certain General Motors car—"Here is the part that was on it; it is genuine; or do you want one of these gyp parts made with some other name? "You will always take the genuine ordinarily; that is what you are coping with.

Mr. McHUGH. Mr. Halfpenny, would you say that this substantial difference between original equipment and replacement parts prices

means that over the long run the consumer, in fact, is paying more money for parts than if there were a more even balance between the replacement parts price and the original equipment parts price?

Mr. HALFPENNY. I believe that would be correct.

Mr. McHUGH. Would not that be so because of the fact that a part is replaced several times in the life of a car?

Mr. HALFPENNY. That is right, sir.

That is all I have as far as the prepared statement is concerned.

National Standard Parts has several representative wholesaler and manufacturer members who have accepted this committee's invitation to testify as to their own personal experience and ideas on this problem of General Motors' ever-expanding monopoly, and they are available here to answer questions.

Senator O'MAHONEY. Do I understand that the members of the organization which you represent are manufacturers of identical parts with those manufactured by United Motors Service and other organizations or manufacturers making parts for their own special cars?

Mr. HALFPENNY. That is right.

In fact, some of our manufacturers make the parts for General Motors that are used, as well as selling them in replacement under their own trade name.

Senator O'MAHONEY. My understanding is that the manufacturers whom you represent were those who entered into the business of making parts for automobiles—

Mr. HALFPENNY. That is right.

Senator O'MAHONEY (continuing). Long before World War II, even perhaps before World War I—

Mr. HALFPENNY. That is right.

Senator O'MAHONEY (continuing). When there were more manufacturers, by far, than there are now.

Mr. HALFPENNY. That is right.

Senator O'MAHONEY. Your manufacturers make parts for automobiles because of their particular skills, and the manufacturers found it to their interest to buy the parts of your manufacturers and install them in the cars?

Mr. HALFPENNY. That is correct.

Senator O'MAHONEY. If I remember correctly, you illustrated this theme by referring to Continental Motors which manufactured motors for many different types of automobiles; is that right?

Mr. HALFPENNY. That is right.

Senator O'MAHONEY. So that the manufacturers whom you represent are those who initiated the business of building parts for automobiles?

Mr. HALFPENNY. That is right.

Senator O'MAHONEY. What standards have been employed by the manufacturers whom you represent in the making of parts so as to be sure that they were efficient parts for automobile manufacturers?

Mr. HALFPENNY. All of our manufacturers have engineers, they have laboratories, they spend a great deal of money all the time in trying to further develop and perfect whatever part they are making. It is a precision business, and almost all of the great improvements on the General Motors car in recent years do not come from General Motors but from the independent manufacturers' engineers.

The great improvement in piston rings, for instance, was developed by piston-ring manufacturers, not General Motors; and pistons—bearings, you go down through—valves, all of those things that have developed, our engineers work closely with the engineers on the new oils and gases that are developed that you have to keep perfecting these things to accomplish the things that are necessary.

Senator O'MAHONEY. What you fear is the erection of such concentrated control in the hands of manufacturers that your members will be driven out of business?

Mr. HALFPENNY. Right.

Our people were pioneers in this business, not only as a wholesaler's servicing organization, but our manufacturers, and back many years ago there were 40 or 50 car assemblers, names long since forgotten; now it is boiling down that there are really only three major customers, Chrysler, Ford, and General Motors; and as this concentration develops, of necessity, our market is getting smaller and smaller, and they can dictate the terms.

Senator O'MAHONEY. Thank you very much.

Are there any questions, Senator Kefauver?

Senator KEFAUVER. Do you have any information about what is happening here from a dollar basis, Mr. Halfpenny? That is, what is the dollar size of what the independents have had or, perhaps better still, if you can give us the dollar size of the business that General Motors had a number of years back in the parts business compared with what they are doing now?

Mr. HALFPENNY. That I cannot completely answer. The best studies in the industry indicate that there is about a two and a half billion market in the replacement field.

Studies indicate that the independent wholesaler and manufacturer prior to World War II had someplace between 75 and 80 percent of that total market.

Now the best figures are about half of that; isn't that correct?

Mr. WIGGINS. 60-40 almost.

Mr. HALFPENNY. So the independent wholesaler-manufacturer has been losing the percentage of the market very rapidly. Dollars-and-cents-wise, as it has been increasing, our dollars and cents have not decreased, but percentage-wise we have.

Senator KEFAUVER. From about 75 percent to about 50 percent, you think?

Mr. HALFPENNY. Yes. Maybe—

Mr. WIGGINS. Maybe even less than that.

Mr. HALFPENNY. Some think it is only 40.

Senator KEFAUVER. Down to 40 percent?

Mr. HALFPENNY. That is right.

Senator KEFAUVER. Whereas what percentage of the business does General Motors have now?

Mr. WIGGINS. That I do not know. I do not think we have any figures on that.

Mr. HALFPENNY. They will not divulge any figures on that. Maybe the Government can obtain those figures, but as far as the independent industry is concerned they have been unable to determine that.

Senator KEFAUVER. So the independent industry has gone from 75 or 80 percent to about 40 percent in the last 10 years, you think?

Mr. HALFPENNY. That is right.

Mr. WIGGINS. The volume increases, Senator, but our percentage, our piece of the pie, is getting smaller.

Senator KEFAUVER. Mr. Chairman, I hope we can find out, if they will not divulge, General Motors will not divulge, their figures publicly—

Senator O'MAHONEY. We have some witnesses on this schedule who will testify with respect to statements that have been made, and dealers will be here to testify, I am sure.

Senator KEFAUVER. Thank you, Mr. Chairman.

Senator DIRKSEN. I was going to make only one suggestion, Mr. Chairman. All these parts are subject to an excise tax, are they not?

Mr. HALFPENNY. That is correct; 8 percent.

Senator DIRKSEN. I presume from the Bureau of Internal Revenue some figures might be obtained.

Senator O'MAHONEY. I think that is a very good suggestion.

Mr. HALFPENNY. That is a very timely suggestion because I think in the main that General Motors buy their parts tax exempt, and then pay the tax when they use them, so you might have—

Senator DIRKSEN. I think the question raised by Senator Kefauver is an interesting one as to the overall volume and how it is distributed.

Mr. HALFPENNY. As much as we dig, we cannot find that information.

Mr. WIGGINS. We would love to have it.

Mr. McHUGH. I think we should point out that we have requested General Motors to furnish us statistical information which will bear out this point, which will reflect the answer, and we are waiting for that answer now.

Senator O'MAHONEY. It is only fair to say that General Motors has cooperated with the committee in furnishing a lot of information. Our staff members have had interviews with them; and I think we are making progress in getting the facts laid on the table where all may see.

I think that Senator Dirksen's suggestion about inquiry to the Bureau of Internal Revenue would be very productive of some others of that kind.

Is that all you wanted to ask?

Mr. HALFPENNY. We appreciate this opportunity of being heard, too, Senator.

Senator O'MAHONEY. Mr. Halfpenny, even though you do pronounce your name the English way, I want to congratulate you on your testimony.

Mr. HALFPENNY. I might say it is very Irish, however, even if it is pronounced an English way.

Senator O'MAHONEY. Your testimony was very clear, and you appear to be in command of your facts at all times in response to our questions.

Mr. HALFPENNY. We have lived with them. I think I must say that you will find that most of the gentlemen from General Motors will try to be cooperative.

We have no personal quarrel with them, but we do on the overall situation feel they are attempting to do, and most of them have, a job to perform, and their job is to get as much of this business as they

can; and until the rules of the game are spelled out, why, I do not see that you can object too much to it, and that is why we are here.

Senator KEFAUVER. We can object, but maybe you cannot blame them.

Mr. HALFPENNY. That is right.

Senator DIRKSEN. Mr. Halfpenny, I notice in your statement under this so-called package arrangement unsold parts can be returned within a year of the date of contract.

Mr. HALFPENNY. That is right.

Senator DIRKSEN. Is that a general practice in the trade?

Mr. HALFPENNY. No; it is not. All of our independent manufacturers have some obsolescence protection of some percentage; generally 5 percent is all they will allow. You have to in this industry with fast changing models and things; but they have given a 100 percent obsolescence for a period of 1 year, which is very liberal and unusual.

Senator DIRKSEN. Actually, that is almost a consignment proposition.

Mr. HALFPENNY. That is right; and I might say this, that you have a problem if a wholesaler decides he is going to take on this General Motors package deal; he goes to his local banker and talks about it; that General Motors name is enough to get credit usually; where if we had some independent, the banker would look at him with suspicion.

I will stay here with these other witnesses.

Do you want Mr. Holzwasser next?

Senator O'MAHOONEY. Thank you, Mr. Halfpenny; we are trying to make a decision now as to what the future will be.

Mr. HALFPENNY. We appreciate very much your courtesy and the time you have extended to us.

Senator O'MAHOONEY. We are very grateful to you and to Mr. Wiggins.

Mr. WIGGINS. Thank you, sir.

(Discussion off the record.)

Senator O'MAHOONEY. The committee will stand in recess until 1:30.

(Whereupon, at 12:15 p. m., the subcommittee recessed, to reconvene at 1:30 p. m., of the same day.)

AFTERNOON SESSION

Senator KEFAUVER (presiding). The committee will come to order.

Mr. Holzwasser, president of the Arrow Armatures Co., Boston, Mass.

STATEMENT OF ALBERT S. HOLZWASSER, PRESIDENT, ARROW ARMATURES CO., ACCOMPANIED BY HAROLD T. HALFPENNY, COUNSEL, NATIONAL STANDARD PARTS ASSOCIATION

Mr. HALFPENNY. He is one of our National Parts Association members, Senator.

Mr. HOLZWASSER. Gentlemen, since I shall be discussing generators, I brought a cut-open sample of one in order that I might explain to

you the various components, should you ask questions in connection therewith.

I brought a statement with me, which I shall read.

Senator KEFAUVER. All right, sir.

Mr. HOLZWASSER. Mr. Chairman and members of the committee, my name is Albert S. Holzwasser, of Boston, Mass. I am president of Arrow Armatures Co., and its subsidiary, Arrow Armatures Co., of Spartanburg, S. C. This is a comparatively small business. It employs about 80 people in the Boston plant and about 40 at Spartanburg. This company is engaged in the rebuilding of generators and starters for automobiles and the rewinding of armatures, which are a component of both generators and starters. I appear here to discuss the effect General Motors Corp. has on the operations of Arrow Armatures Co.

Some years back there were nearly a dozen manufacturers of starting, lighting, and ignition equipment and this category includes generators, starters, and armatures, and all of those manufacturers supplied so-called original equipment to vehicle manufacturers who were in existence at that time.

Mr. McHUGH. I wonder if you would explain about how long back it was that there were some really 12 manufacturers manufacturing so-called original equipment?

Mr. HOLZWASSER. That would go back in the vicinity of 1920, in the 1920's, and it probably continued until—I am trying to recall when Gray and Davis were located in the neighboring city to Boston, Cambridge, Mass.—I believe they disappeared from the picture about 1935, 1938, somewhere in that area.

Mr. McHUGH. Is your company in the business only of rebuilding generators and armatures and starters?

Mr. HOLZWASSER. Our business is that of rebuilding the generators, starters, and armatures. We are capable of producing new. We have to manufacture certain new components such as these feed coils here, these new.

I will continue with my statement.

But now the field has narrowed to three: Ford Motor Co., who produce generators and starters for their own vehicles; Electric Auto-Lite Co., who supply generators and starters to Chrysler as well as competing with General Motors in supplying the other independents such as Nash, Packard, and Willys. The third producer is General Motors, who through their subsidiary, Delco-Remy, supply equipment on all General Motors cars and trucks as well as competing with Auto-Lite in supplying the independents. Since Ford appears to have no surplus production to sell in the general market, the field actually narrows now to but two suppliers. And in addition to supplying equipment for conventional vehicles, both Delco-Remy and Auto-Lite supply equipment for military vehicles to all branches of the military.

Mr. McHUGH. Mr. Holzwasser, does Delco-Remy make rebuilt generators, belts, and starters?

Mr. HOLZWASSER. They do. I will touch on that shortly.

Mr. McHUGH. About what percentage of the independent manufacturers' business does Delco-Remy Co. have?

Mr. HOLZWASSER. In the original equipment field they have their own 50 percent, which I believe is close enough for an approximation for our purpose here. In addition to that—

Mr. McHUGH. Will you explain what you mean by "their own 50 percent"?

Mr. HOLZWASSER. Well, you can start with a Cadillac and go through to a Chevrolet; Cadillac, Buick, Pontiac, Oldsmobile, and Chevrolet, plus the trucks that they produce, will account for close to 50 percent of the total car production. And they supply equipment on all of their own vehicles.

Now, we take Ford at about 24 percent of the production, that will leave a remaining 26 percent of the production broken down between Delco-Remy and Auto-lite. And I believe of that market Delco-Remy enjoys the largest share.

Mr. McHUGH. That would give Delco-Remy division of General Motors something between 52 and 55 or 56 percent of the total market for generators and starters?

Mr. HOLZWASSER. I would say it would be much greater. You would have 50—I should say about 62 percent—you would have 50 plus a large share of the balance between 24 and 50, which is 26—I would say possibly 14, it would be about 64 percent, rough figures, of the market supplied by Delco-Remy.

Mr. McHUGH. Continue.

Mr. HOLZWASSER. I will continue.

Generators, starters, and armatures produced by the General Motors subsidiary, Delco-Remy, are in turn marketed by another GM subsidiary which is known as United Motors Service; and it is United Motors Service which undertakes the marketing of the other GM motor vehicle parts such as feneders, gears, axles, grillwork, and numerous other items. But we are concerned chiefly with generators, starters, and armatures, only those which when sold become part of military vehicles.

The range of General Motors products runs from diesel-powered railroad trains all the way down to the subject of this discussion: generators, starters, and armatures; and for several years General Motors has been rebuilding secondhand generators, offering these to the trade as "genuine" Delco-Remy rebuilt generators.

Senator KEFAUVER. May I ask a question there? You mean they have been rebuilding Delco-Remy generators and offering them as General Motors rebuilt generators?

Mr. HOLZWASSER. Mr. Chairman, they have been rebuilding Delco-Remy secondhand generators, and no other make. This here happens to be a rebuild of our product, a rebuilt Delco-Remy generator. Now, we market it as a rebuilt generator under our own trade name.

Senator KEFAUVER. They market it as a genuine Delco-Remy rebuilt generator?

Mr. HOLZWASSER. Right.

As rebuilders of generators, their United Motors Service division is now in competition with several hundred small businesses who do and have done generator rebuilding for 20 or more years.

Many of these small rebuilders have applied good business principles and aggressive selling tactics and techniques to their operations and have become reasonably successful and sound. After battling for years against price cutting and chiseling tactics on the part of back-alley sharps, these small, more successful rebuilders are now confronted with a more difficult competitor. General Motors in the form

of their subsidiary, United Motors Service, presents an almost insurmountable problem.

Mr. McHUGH. Mr. Holzwasser, I wonder if you would tell us something of the difference in price between the rebuilt generator and a new generator.

Mr. HOLZWASSER. While I touch in a moment—I would like to take a pricelist here to refresh my mind—while I touch in a moment on the cost of the rebuilt of various categories, at this moment we will take one of the most popular, in fact the most popular—and I mean by that it is a fast-moving, rapidly selling item—a rebuilt generator will sell at the warehouse distributor's so-called level—we call it a jobber, I think throughout these hearings you used the word "jobber" mostly—at \$8.85 for a rebuilt generator. And a comparative unit will sell at the same trade level for \$12.67; that is, at the jobber level. The difference in price is close to 50 percent.

Mr. McHUGH. That is, the difference in price between a new generator and a rebuilt generator made by Delco-Remy?

Mr. HOLZWASSER. Right.

Mr. McHUGH. And how does your price for the rebuilt generator compare with the Delco-Remy price?

Mr. HOLZWASSER. We charge \$6.95 for a comparable unit, a unit which will compare in model with the \$8.85 one.

Mr. McHUGH. Could you tell us about what percentage of the total number of generators which are sold in the replacement market are rebuilt generators as against the percentage which are new generators?

Mr. HOLZWASSER. I just read a survey conducted by Motors Service here a short while ago, from which I can quote with reasonable accuracy. The number of rebuilt generators sold—rather, recorded as sold—was somewhere in the vicinity of 1,700,000 as compared with about 465,000, I believe, of new units, sold in the replacement field for definite repair jobs which they could pinpoint.

Mr. McHUGH. Is the difference in price the principal reason for this?

Mr. HOLZWASSER. I believe it is, because when you add to these cost prices the profit at both the jobber levels and the resale profit plus the resale profit of the dealer, I believe you can multiply these figures by three and get a fairly realistic picture of the ultimate selling price. Simply an \$8.85 job would go for \$27 to \$28 on a rebuilt, and would go in the vicinity of \$38 to \$39 on resale at the consumer level on a new generator. I believe price is one affecting factor.

Mr. McHUGH. Has Delco-Remy also been in the business of rebuilding generators, or is that something that they have been getting into more in recent years?

Mr. HOLZWASSER. It is more of recent years. Their rebuilding operations began—I will take a so-called shotgun guess at it—about 10 years ago, I believe. They have been rebuilding for about 10 years.

Mr. McHUGH. Previous to that time they had been in the business just of making new generators and starters?

Mr. HOLZWASSER. Just of making new generators, and in fact, not even servicing.

Mr. McHUGH. Does that mean, then, that to all intents and purposes they would not have then been a substantial factor in the replacement market?

Mr. HOLZWASSER. I don't quite understand your question.

Mr. McHUGH. As far as sales in the replacement market, then, when they were making only generators of this type, would this mean that they would not be a very important factor?

Mr. HOLZWASSER. At that time they were not an important factor in the replacement-parts business, so far as generators are concerned.

Mr. McHUGH. Continue.

Mr. HOLZWASSER. Here is one example of what is happening. A customer of ours in Massachusetts who also handles Delco-Remy was told by a United Motors Service salesman, "You have two lines of armatures on your shelf—what will it be, Arrow or Delco-Remy?" Inferring that if he handled Delco-Remy, he can't carry Arrow or vice versa.

Mr. McHUGH. I wonder if you would explain the type of customers that Arrow Armatures sell to.

Mr. HOLZWASSER. Yes, sir. We sell to automotive parts wholesalers, that is, the general automotive parts wholesalers who are more or less the subject of discussion this morning. And in addition there to we sell to the electrical parts wholesaler specialists, who are sometimes known as official service stations in other capacities.

Mr. McHUGH. Among those wholesalers to whom you sell, are there wholesalers who are purchasing from United Motors Service?

Mr. HOLZWASSER. Yes.

Mr. McHUGH. You also sell to independents having no connection with United Motors Service?

Mr. HOLZWASSER. Yes.

Mr. McHUGH. Does your wholesaler in turn sell to General Motors franchise car dealers?

Mr. HOLZWASSER. Yes.

Mr. McHUGH. Would that be the principal market of your wholesalers?

Mr. HOLZWASSER. No. The principal market, I should judge, would be for our customers among the independent repair shops, filling stations, and such categories.

Mr. McHUGH. Would you want to furnish to this subcommittee the name of the customers that you refer to here in Massachusetts?

Mr. HOLZWASSER. I would prefer not.

Mr. McHUGH. Why is that?

Mr. HOLZWASSER. Well, I am quite sure——

Senator KEFAUVER. Well, we won't ask you to furnish it; it might embarrass the customer, is that it?

Mr. HOLZWASSER. Definitely.

Senator KEFAUVER. All right.

Mr. McHUGH. Continue.

Senator KEFAUVER. Perhaps you can tell counsel if he wants to know after you get through testifying.

Mr. HOLZWASSER. I would be glad to.

In another case, a Connecticut wholesaler, after carrying Arrow generators for about 2 years, wrote a letter in which he stated that before he handled Arrow, generators were an orphan line with him, and that he didn't sell many. We worked our merchandising program with him, increased his business many times since that letter was written, and then he bought the GM parts package deal. Since he went GM, his purchases of us have been cut more than half.

And here's a report typical of many we get from our salesmen; this one is about a wholesaler in New York State. Our salesman says, "He is now a GM parts jobber, definitely not interested."

Mr. McHUGH. Have these statements, to a large extent, since General Motors introduced this so-called—what is referred to here as their package deal—

Mr. HOLZWASSER. Those statements have definitely come in since that date. In fact, both statements are very recent.

Mr. McHUGH. So that your salesmen are complaining that since this program of General Motors has been introduced the dealer states that he is not permitted to carry more than one line, which is the General Motors line?

Mr. HOLZWASSER. Well, that was a statement which I made a short while ago in the first case, that is, the Massachusetts jobber. But neither the Connecticut jobber nor our salesmen have put it in those terms.

Mr. McHUGH. How large a business had you been doing with this Connecticut wholesaler?

Mr. HOLZWASSER. We reached a maximum with him of approximately \$20,000 last year which is a fairly good volume of business for a single wholesaler. That was during 1954. In the first quarter of this year the volume kept up at about the same basis; it probably had increased a small percentage. And since June it has just nosedived, I would say.

Mr. McHUGH. Do you know about when he became a General Motors dealer?

Mr. HOLZWASSER. No; I can't give you the definite date on that; I am sorry.

Senator KEFAUVER. This package-deal business started some time after January 1951; is that correct?

Mr. HOLZWASSER. 1954.

Senator KEFAUVER. 1954.

Mr. HOLZWASSER. Around June 1954 the package deal began. They announced it early in 1954, around January. The effects of distribution did not begin to take place in the automotive jobber field until about June, midyear, 1954. These two cases I speak of are in mid-1955.

Senator KEFAUVER. All right, sir, continue.

Mr. McHUGH. Mr. Holzwasser, do any of your salesmen report to you complaints that the General Motors and United Motors Service dealer who is also carrying your line is not giving your line as attractive a display as the General Motors line?

Mr. HOLZWASSER. Well, you can go into any of these United Motors electrical specialties, and in particular you will find that our product is under the counter or in the basement or on a high shelf where it is difficult to observe generally. The parts wholesaler and the independent parts wholesaler keep our stock right up on the bins or right along with other products where they are accessible.

Mr. McHUGH. Continue.

Mr. HOLZWASSER. We believe our price structure is competitive because if it were not we wouldn't be able to sell our generators. Our price on comparative Delco-Remy generators runs about \$1.90 less than United Motors Service at the wholesaler level and this is on fast-

selling items. Simply as a result of a recent price increase they ask \$8.85; we ask \$6.95. Quality for quality, we believe our rebuilt generators to be as good or better than their rebuilt generators but we have a hard time outselling them and in some cases keeping long-established customers to continue to buy from us. While the subsidiary, United Motors Service, includes and lists new generators in their price sheets, the stocks on the wholesalers' shelves are all rebuilt generators. From this, one can only assume United Motors Service is interested in selling rebuilt generators only.

Another problem hit us about a year ago. For several years the Army and Air Force Exchange Service, New York City, had been purchasing from us Arrow rebuilt generators, starters and armatures. We had received and were working on several of their orders; in fact, some were packed in export cases ready for shipment when cancellations were received. Inquiry as to why the orders were canceled developed this stereotyped answer, "We got orders from the other side, they want new generators."

We were even denied payment for expenses incurred by us in production and in packing these orders in export cases. We are still working on this case, and hope some time to find out why our merchandise is being discriminated against in favor of merchandise produced by so-called big business.

Senator KEFAUVER. Who did they buy these from when they canceled your order?

Mr. HOLZWASSER. I wish I knew. I investigated, the thing is still under investigation, I have copies of correspondence here. And the explanation of how they work, how the exchange service works, was given to me.

To put it concisely, the exchange service offers merchandise abroad. They make it available to civilian employees as well as military personnel in the various exchange offices, probably the post exchange. I am not quite certain. When merchandise is ordered at these exchange depots, it is in turn ordered through New York through one of their exchange purchasing agents.

Senator KEFAUVER. And they placed an order with you for how many armatures?

Mr. HOLZWASSER. They placed at one time, the point in question, they placed a series of orders at one time, each order duplicating the order, presumably for stock, and it consisted of—well, a total of \$570.55. Here is one order which was placed in February 1954 for delivery—shipment in June 1954.

Senator KEFAUVER. How much was the total of the order they canceled on you?

Mr. HOLZWASSER. They canceled 3 of 5 orders placed. That was around \$16,000, a little over \$2,000 they canceled.

Senator KEFAUVER. And had they placed a firm order with you?

Mr. HOLZWASSER. Yes, sir. There it is—there they are.

Senator KEFAUVER. Of course, it is not big money, but it is big money for a little plant like yours.

Mr. HOLZWASSER. It is. The amount of cost of packing allowed on each order was \$16.

Senator KEFAUVER. And they won't even reimburse you for that?

Mr. HOLZWASSER. They have not reimbursed me, they will not reimburse me. I have a letter here, I believe it is handy:

We are returning herewith your invoice number so-and-so in the amount of \$16 applicable to our purchase order NY 156255, and request that charge be canceled. Attention is invited to our amendment so-and-so which canceled the entire purchase order, and therefore no shipment has been made.

So as far as who got the business from then on, I don't know.

If you would like a copy of this, you may have it.

Senator KEFAUVER. Mr. Counsel, I suggest you write the Defense Department or the Post Exchange Department a letter and let us see what happened to this order. That is a sorry way to treat a little-business man.

Mr. McHUGH. Mr. Holzwasser, you state you made inquiry for the reasons of the cancellation, and you were told that they got orders from the other side that they wanted new generators. I believe you stated earlier there are only two manufacturers of new generators, Auto-Lite and Delco-Remy.

Mr. HOLZWASSER. Auto-Lite and Delco-Remy.

Mr. McHUGH. So, if they did use new generators, they would have to be made by 1 of these 3?

Mr. HOLZWASSER. One of these three.

Senator KEFAUVER. They have been buying rebuilt generators from you in the past for this service; haven't they?

Mr. HOLZWASSER. Yes, sir, Mr. Chairman; they have been purchasing these articles from the Arrow for possibly 5 years.

And if I may inject here, in my inquiry as to why they were canceled, I suggested the fact that they had been purchasing orders for that period of time, and during the entire period they had one complaint of a failure, which amounted to around \$5, in all that period, for which they asked reimbursement, and a check was mailed to them immediately.

Senator KEFAUVER. All right, sir, go ahead.

Mr. HOLZWASSER. Within the last month an Arrow distributor telephoned for the price and the availability of an armature, specifying a certain part number, stating the armature was needed to service a refueling vehicle at the Bedford, Mass., Air Force base.

The parts number was unfamiliar; and after a search of all available price books, no such part number, price, or specifications on this armature could be found. Our customer told us that an important vehicle was out of service. It was a refueling vehicle, that the Army had ordered a new armature, but that the Delco-Remy factory would not deliver the new armature until January—they just had to have that vehicle back in service right away.

I told him to have the Army man bring the old armature in, that we would rewind it and have it ready in a day or two. We have the facilities to do that. The armature was brought in and with it another similar armature. It seems, overnight, their second and only other vehicle broke down. Peculiarly, while the parts number on the armature owned by the Government meant nothing to us, the armatures were identical to armatures produced by Delco-Remy for conventional vehicles under a different, but familiar, parts number.

It is of interest here to note that our distributor's charge to the Government for supplying these armatures and rebuilding the complete starter motor, including all parts and labor, was about \$33 each. A new part, as ordered, would have cost the Government in the vicinity of \$70.

Mr. McHUGH. Do you mean by that that there was no published information so identifying that part so that when the request came to have it rebuilt, you could immediately tell what it was?

Mr. HOLZWASSER. No parts numbers were published, no specifications published by Delco-Remy on any of the military vehicles, whether they be strategic or nonstrategic.

Mr. McHUGH. Do you happen to know whether or not this was an item that was used for strategic purposes only?

Mr. HOLZWASSER. Well, for the purpose of this meeting I will tell you that a soldier boy brought the parts in to us, and he told us that it was used for refueling the vehicles out at the Air Force base, just an ordinary tractor unit which hauls a loaded trailer of gasoline, nothing strategic about it.

Mr. McHUGH. Does that mean that if there was no literature describing the item in question, the only source for furnishing such material must come from the original manufacturer?

Mr. HOLZWASSER. It must come from the original manufacturer. And it is tied up so tightly that even the automotive-parts wholesaler or the electric service stations and the electric distributors have no information. That part had to be ordered directly from the Delco-Remy factory; Delco could not deliver that part until January.

Mr. McHUGH. What is the period of time between the time the machine broke down and January, when they couldn't deliver?

Mr. HOLZWASSER. This is current—this thing occurred possibly the 10th day of October. And that would be $2\frac{1}{2}$ months, nearly 3 months, at least, before that part could be procured. The vehicle would be tied up.

Mr. McHUGH. That means that during the period of time that vehicle would be inoperative?

Mr. HOLZWASSER. It would be inoperative.

Mr. McHUGH. Now, how did it come about that the Army man brought the armature in to you?

Mr. HOLZWASSER. Well, he was purchasing other material from an automotive wholesaler, and the wholesaler told him—in fact, the wholesaler called me and gave me the parts number. Well, I had been through this before with other parts, most of them I was unable to do anything with. This particular thing, it rang a little familiar in my mind, and I told the wholesaler to have the fellow bring it in if they could possibly get it. I know at times they can't take pieces off the base. But in this particular case they got the unit over to me, we recognized it, and we gave it back to him the second morning.

Mr. McHUGH. Does this mean that if he had not been able to bring the piece of equipment in to you for your actual examination, you wouldn't have known what was involved, or you wouldn't have been able to supply it?

Mr. HOLZWASSER. We could have done absolutely nothing for him, unless he found some other way out that vehicle would have been continuously tied up until the arrival of another armature.

And while we are discussing the military, here is a brief résumé of my personal experience while attempting to obtain business during and after the recent wars. Here we are confronted with the same problem of unfamiliar parts numbers. Regulations at the arsenal, so I was told, prevented them from furnishing samples. And if a

parts number was given on an invitation to bid, no prints would be available. The invitations, as an example, specified Delco-Remy part No. 13579 or equal. A parts number was specified; therefore, no print was available.

Here again the parts number was not a commercial parts number—it conveyed no information. A lot of time and money was expended by this company in a noble attempt to get some business at the Detroit Arsenal.

Of all the invitations to bid which were posted at the Detroit Automotive Center, only one listed an intelligible parts number while we were actively following such postings. And that one was for a Delco-Remy part. We submitted a price and subsequently we found ours was the low bid. We were asked for samples, and we submitted them by mail, but we never got the order. All we got were claims that the samples were never received. We followed the matter up by mail and telephone, and eventually we were told that the fiscal year had ended, that they couldn't place an order for an equal part without samples, it was too late, and that they had to place the order elsewhere to get the purchase in under the current fiscal year.

So far as parts numbers for Auto-lite equipment is concerned, no problem existed. It appears Auto-lite uses their conventional parts numbers whether the part or the complete unit assembly is for a civilian or a Government-owned vehicle.

Gentlemen, I am sorry to tell you, this condition still exists in the military. Small business is excluded from selling to the military, most particularly in the case of parts for General Motors products, electrical parts, that is, for with these I am familiar.

Parts for repairing some of the smaller products, such as speedometers, are restricted in sale to their official service stations only, to the degree that even if a car owner wants to "bid" himself he cannot buy a part, other than a speedometer cable or casing, to repair his own speedometer. In the case of speedometer casings and cables, competition in the open market exists. Many independents are making and marketing these articles.

Delco-Remy, through their AC and UMS divisions, sell these parts on the open market through the automotive parts wholesaler as well as through their official service-station outlets.

Discrimination, if I may call it that, persists. It precludes the small, independent businessman from getting a share of business which is rightfully his. And the damnable part of it is, so far as the military business is concerned, it is costing the Government many thousands of dollars, too.

Senator KEFAUVER. What is your suggestion for a remedy?

Mr. HOLZWASSER. Mr. Chairman, I don't have the wisdom of Solomon. We have this condition. There is only one set of conditions which will give the small-business man the opportunity to compete in the market. If he is given the opportunity to compete in the market, I am quite sure he has the intelligence, the ability, and the willingness to get out there and compete, and compete strongly.

The chief difficulty we have encountered at the present time is the door is closed to us because of the fact that Delco-Remy is our line.

I think one of the most serious complaints that I have to overcome, serious obstacle, may I say, in bringing our line out is that the man

says: "We have the General Motors parts back, we are going to sell Delco-Remy generators; how can we sell two lines?"

Senator KEFAUVER. And Delco-Remy wouldn't like it if you handled two lines?

Mr. HOLZWASSER. I don't think they would.

Senator KEFAUVER. I mean, that is what they tell you, in so many words?

Mr. HOLZWASSER. Yes.

Senator KEFAUVER. How about defense procurement? Do you place many orders over here with the Defense Department?

Mr. HOLZWASSER. I never had from the Defense Department, directly, any business other than that one order I speak of, from the date of inception of my business.

Senator KEFAUVER. Don't they buy rebuilt armatures?

Mr. HOLZWASSER. No. The rebuilt product is definitely out. Defense procurement will not purchase a rebuilt product.

Senator KEFAUVER. Didn't they use to?

Mr. HOLZWASSER. Not to my knowledge.

Senator KEFAUVER. Well, if it is good enough for other people, why isn't it good enough for the Defense Department?

Mr. HOLZWASSER. Never have we been able to have a rebuilt product accepted—rather, a bid accepted—it must be new.

Senator KEFAUVER. The armature you have there, what is that used in?

Mr. HOLZWASSER. That fits a 1954 or 1955 Chevrolet, I believe.

Senator KEFAUVER. It looks new. Is it about as good as new?

Mr. HOLZWASSER. That product there will go out in the field and will perform—I hesitate to say it, but I think I will—that will go out and perform better than the product it was before we built it, when it was new.

Senator KEFAUVER. Do big corporations that use a lot of automobiles buy rebuilt armatures?

Mr. HOLZWASSER. Yes. We find large transit companies use them. I am very familiar with the metropolitan authority in Boston, in Philadelphia, I am quite sure they use them. We don't sell them now.

We have, in addition to our passenger equipment—we list in our catalogs the applications for heavy vehicles, road rollers, steam shovels, or other gasoline shovels, and horse—farm tractors—it is an accepted piece of merchandise, it is an accepted fact that a rebuilt generator is available, and that they are good and that they are economical, that there are economical features connected with them.

Senator KEFAUVER. But the Government, with all of its fleet of civilian cars all over the world, doesn't use any rebuilt armatures?

Mr. HOLZWASSER. I wouldn't want to state definitely; if there are any, they would be used to a minor degree. Possibly the Post Office might, through some of their local garages and some of their large garages, they might use some, but I don't know of any being used in military vehicles, even the nonmilitary uses, such as pickup and delivery to and from the posts.

I have met resistance constantly; there is just one answer to it: "We don't want a rebuilt product." I say that thousands of dollars could be saved, and I am quite sure an added source of supply is available to them of good merchandise, not only on generators but many other parts.

Senator KEFAUVER. What is the difference now in what they would pay for a rebuilt one and what they would pay for a new one?

Mr. HOLZWASSER. Well, the Government would not buy at this price, the Government would have to pay about \$12 and some odd cents, possibly \$13, as a rough estimate, for a Delco-Remy unit rebuilt, and a comparative new job would cost about \$19.

Senator KEFAUVER. All right, sir.

Anything else?

Mr. McHUGH. Senator, this morning Mr. Halfpenny testified concerning this practice of manufacturers buying original equipment at cost, or sometimes below cost. Mr. Halfpenny has with him a letter from one of his jobbers that bears upon this practice. This was a letter which his jobber received from an independent manufacturer, and we think it is important that this be read into the record, to reflect the accuracy of this practice.

However, Mr. Halfpenny advises us that the recipient of this letter, a member of his association, has not authorized the release of the name of the manufacturer, because it is someone with whom he has been dealing, and he would prefer to protect him.

So, Mr. Halfpenny, if you would read the portions of that letter which bear upon the information you furnished this morning—

Senator KEFAUVER. Read the pertinent part.

Mr. McHUGH. Give us the date.

Mr. HALFPENNY. The date of this is August 19, 1955, and this was submitted to me by one of our member companies. He could not be present, and he requested that I read this. The names are left out.

It starts out:

I am taking the liberty of answering your letter of August 5 on the subject of fan-belt pricing.

We are familiar with the material which your committee has circulated among fan-belt manufacturers and believe that your thoughts do have merit.

The crux of this situation lies in the prices at which the rubber manufacturers sell fan belts to the car factories. They do not charge different prices for those belts which are going to be used as original equipment and for those which are going to be used for their service requirements. Because of the zealotness of these rubber manufacturers to obtain this volume production, they set their prices very low, since this production takes care of a substantial portion of any manufacturer's overhead.

Accordingly, on his belt for service requirements, the car manufacturer buys cheaply, and obviously, he can sell it at a comparatively low price. Not only does this put other rubber manufacturers in a bad position on their replacement sales, but it also puts the manufacturer who made the original equipment in a bad position on his own replacement sales, since, in replacement, manufacturers attempt to price realistically by adding in a fair amount for sales, advertising, and administrative expenses.

Our company has not in recent years solicited original equipment business from the car factories, for the simple reason that we could not make a profit on any other business that we might take at the prices at which the belts are currently being sold.

We have priced our fan belts in such a manner as to show a distributor 32 percent profit, which is far in excess of some of the short profits at which distributors are selling merchandise today. It is against our policy to encourage small profit margins. Therefore, unless something unforeseen competitively should happen, we do not plan making any change at the present time in our fan-belt structures from the standpoint of profit.

I think that your problem is basically with the rubber manufacturers who supply belts for original equipment. Actually, they should supply the belts for service requirements at a higher price than the belts for original installation.

We are aware of and are sympathetic to the problem which you are facing, and regret that we are not in a position to correct this situation for you.

Senator KEFAUVER. That is a very interesting letter.

Now, our next witness.

Let me express the committee's appreciation to Mr. Holzwasser for his testimony.

STATEMENT OF HENRY TRAUSCHT, SECRETARY AND GENERAL MANAGER, EVANSTON AUTO SUPPLY CO.; ACCOMPANIED BY HAROLD T. HALFPENNY, COUNSEL, NATIONAL STANDARD PARTS ASSOCIATION

Mr. McHUGH. Do you have a prepared statement that you would like to give, Mr. Trauscht?

Mr. TRAUSCHT. Yes, sir; I have.

Mr. McHUGH. Will you state your name?

Mr. TRAUSCHT. My name is Henry Trauscht. I reside in Evanston, Ill. I am here representing the National Standard Parts Association.

My business is that I am a wholesaler of automotive parts equipment and supplies in Evanston and three of the North Shore towns.

Mr. McHUGH. What is the name of your wholesale establishment?

Mr. TRAUSCHT. Evanston Auto Co. I have been in business since 1923.

Mr. McHUGH. In the business of wholesaling automotive parts?

Mr. TRAUSCHT. Yes, sir. I have been in the automotive business since 1911.

I have a prepared statement I would like to make.

Senator KEFAUVER. How long is your statement?

Mr. TRAUSCHT. Without interruptions, sir, about 12 minutes.

Senator KEFAUVER. Don't figure on it without interruptions. You don't do that down here in the Senate.

Mr. TRAUSCHT. All right, sir.

Senator KEFAUVER. So it is up to us how long it is; is that it?

Mr. TRAUSCHT. That is within your province.

Mr. McHUGH. It is about 5 pages, sir.

Senator KEFAUVER. Go ahead.

Mr. TRAUSCHT. My appearance here today is the third before a congressional committee of this nature. In addition I have conferred on several occasions with members of the Federal Trade Commission, and on one occasion with an Assistant Attorney General, all relative to the enforcement of our fair trade laws.

Senator KEFAUVER. Have you identified yourself? You are president of the Evanston Auto Supply Co.?

Mr. TRAUSCHT. No, I am secretary and general manager of the Evanston Auto Supply Co.

Senator KEFAUVER. You are a constituent of our distinguished colleague, Senator Dirksen.

Mr. TRAUSCHT. And I am one of his fine admirers.

Senator DIRKSEN. Thank you.

Senator KEFAUVER. Senator, do you want to preside while your constituent testifies?

Mr. TRAUSCHT. I shouldn't have said "fine admirer"—I am one of the admirers of the fine Senator.

Senator KEFAUVER. Well, don't disparage yourself.

Mr. TRAUSSCHT. I feel a little bit like a veteran campaigner in this regard who has accomplished nothing.

During a recent interview with Messrs. Amidon and McHugh in Chicago they asked me to appear before this committee and make a statement showing how the lack of enforcement of our fair trade laws is affecting the small-business man. And at that time my answer was in the negative. And the reason was that I considered trips to Washington in this connection a waste of time.

They asked me why I felt this way. And I particularly referred them to the congressional record of hearings before Subcommittee No. 1 of the Select Committee on Small Business, House of Representatives of the 80th Congress. And here is the record.

Between September 3, 1948, at Butte, Mont., and November 24, 1948, here in Washington, there was amassed these 1,368 pages of testimony complaining about the lack of enforcement of our fair trade laws. The hundreds of small-business men and their representatives in different lines generally speaking testified about the same abuses. That was 7 years ago. And the situation remains unchanged to this date.

At this very moment the law prohibiting coercion in business is violated with the same impunity by General Motors, Ford, Chrysler, the major oil companies, and the major rubber companies, as it was in 1948, and verily, ever since the Clayton Act was enacted.

They apparently regard this law with the same contempt that the American viewed the prohibition law.

Insofar as I know, there is no single case on record where General Motors has been cited for violating the cease-and-desist order issued against them in 1941.

Mr. McHUGH. Will you tell us very briefly what the nature of that cease-and-desist order was?

Mr. TRAUSSCHT. Mr. McHugh, first of all, I am a layman, and my understanding of that 1941 cease-and-desist order was that they were not to use coercive practices in the selling of their merchandise to their dealers.

Mr. McHUGH. The merchandise you are referring to there is parts and accessories and equipment?

Mr. TRAUSSCHT. Yes, parts and accessories, and supplies.

Mr. McHUGH. This order prevented the General Motors Corp. from using coercive tactics and requiring dealers to deal exclusively in General Motors parts and accessories and equipment?

Mr. TRAUSSCHT. Yes, sir; that is my understanding.

It can be conservatively stated——

Senator KEFAUVER. Before you go on there, let me interrupt. Mr. McHugh, just for the record, you have studied this matter; have any cease-and-desist orders been——

Mr. McHUGH. Yes, there has been testimony already, one witness from the Federal Trade Commission——

Senator KEFAUVER. Well, if there is testimony already, I don't want to take up the time. Is that explained fully in the record of these hearings?

Mr. McHUGH. Yes. The witness who testified went into quite some detail. There was a case of the Federal Trade Commission which resulted in a cease-and-desist order in which in substance the General Motors Corp. was found to have engaged in coercive practices in en-

forcing their car dealers to deal exclusively in General Motors parts, materials, and supplies.

And the effect of the order that was entered at that time was to enjoin them from continuing those practices.

Senator KEFAUVER. I know, but since that time have there been any further cease-and-desist orders issued?

Mr. McHUGH. No; the testimony from the Federal Trade Commission referred to the various complaints and investigations which have followed the 1941 order. The Commission has from time to time attempted to find out what the situation was, and they have never filed or instituted any action against the General Motors Corp. since that time to require a policing of that order.

Senator KEFAUVER. Then Mr. Trauscht's statement is correct?

Mr. McHUGH. Yes.

Senator KEFAUVER. All right, sir.

Is the cease-and-desist order a part of the record anywhere?

Mr. McHUGH. Yes. I believe the order is a part of the record, too. It was introduced about the time Mr. MacDonald of the Federal Trade Commission testified concerning this.

Mr. TRAUSCHT. It can be conservatively stated that the car manufacturers and major oil companies violate the Clayton Act myriads of times each year.

The practice of coercive selling has been with us for so many years and is practiced so extensively that it has become a more or less accepted business policy of those small operators who must do business with the big companies. If the small-business man who is dependent upon the car manufacturer or oil company as his major source of supply does not conform to this method of doing business, he is soon divested of his franchise or his lease. It may seem incredible, but **actually there are thousands of small-business men in the United States who are completely at the mercy of their suppliers. Actually the system can be interpreted as a form of economic slavery. It is certainly far removed from the free enterprise which we all like to boast so much about.**

It might be borne in mind that anybody with a similar commodity, or one who is dependent for the major part of their merchandise from one supplier, cannot survive when this single source of supply is cut off. The businessmen in this position with whom we are concerned are the franchise car agencies, and 95 percent of the service-station operators. With this stranglehold on the franchise dealer's existence, it is a simple matter for the car manufacturer or the major oil company to exercise dictatorial policies, as they do. The agencies must operate as recommended. They must purchase their major supply of parts and materials from the car factory, or otherwise their franchise will be canceled. There is nothing in the franchise covering an exclusive arrangement, nor is the verbal dictation spelled out in so many words. But the understanding and inferences are implicitly understood.

How do we know this system of widespread coercion exists? It has been commonly accepted, for many years. Owners and employees of car agencies and service station operators discuss the condition quite freely with wholesalers and their salesmen. They do not hesitate to admit to us that the retention of their franchise lease is contingent

upon their buying the greater percentage by far of their requirements from the factory or the major oil company, whichever the case may be.

There are numerous cases which can be cited. However, we will confine ourselves to two rather recent experiences to illustrate the point; namely, on permanent antifreeze and undercoating. Both of these commodities were developments of the independent manufacturers, and originally they were sold almost exclusively through automotive wholesalers; that is, the manufacturers and the major oil companies did not deal in this merchandise. Several years ago the car manufacturers began the distribution of both permanent-type antifreeze and undercoating under their own labels, and the major oil companies did likewise with permanent-type antifreeze. In a short time, by their system of coercive selling, and this alone, they cut deeply into the wholesalers' antifreeze and undercoating business.

Our records will bear this out. Car agencies, for example, who purchased Prestone from our company in 500- and 1,000-gallon lots before the car factories distributed private label antifreeze, are now buying Prestone from us in 48-gallon quantities or less, frequently only enough at a time to make the customer demand.

When requested why, their stock answer is that they must sell the brand shipped to them by the car factory.

Mr. McHUGH. Mr. Trauscht, you say they state that they must sell the brand which is shipped to them by the car factory. Are you saying that the car factory ships them without receiving a specific order from the car dealer?

Mr. TRAUSCHT. Frequently.

Mr. McHUGH. Do you have any specific evidence of that?

Mr. TRAUSCHT. In an executive committee I would tell it, yes, but not in public, because these people are friends of mine, I mean, the car agencies are friends of mine, and they are customers.

Mr. McHUGH. By that you mean you would rather not reveal the names of the customers?

Mr. TRAUSCHT. I would in private, but not for the public, for the very simple reason that they would lose their franchise.

Mr. McHUGH. But they do tell you that the factory ships them antifreeze without the car dealer actually making a specific order for that antifreeze?

Mr. TRAUSCHT. Yes, sir; not only that, but other items, too.

Senator KEFAUVER. I think it is fair to observe that one other witness this morning said also they did not want to reveal the name of the customer who made some statement about being required to take a certain product, and that influence is getting pretty substantial when your customers are afraid that they might be badly hurt if their names are brought out.

Mr. TRAUSCHT. It is widespread, sir. It is a menace greater than the American public realizes. And that is not a characterization, because we have numerous service-station operators, for example, who, if they don't subscribe to the policies laid down by their suppliers, the major oil companies who control the property on a lease and release basis, if they don't follow out what is laid down by them and make the major part of their purchases from them, their lease is canceled forthwith; they are out of business.

Senator KEFAUVER. How long are little fellows like you going to be free to avoid the economic pressure against coming down here?

Mr. TRAUSCHT. I have been wondering that. I have been fighting in my small way since this testimony was given 7 years ago. And we have survived, sir, because we are in an expanding market. That is one of the principal reasons for our survival. We have been in a constantly expanding market, a good many of us.

Senator KEFAUVER. You think it does not do you any good from the competition viewpoint to come down here and testify?

Mr. TRAUSCHT. I am sorry to say that we haven't achieved anything as far as the enforcement of the law is concerned, as I see it, from a layman's standpoint. From the standpoint of my answering Mr. McHugh's question as to who these parties are, these agencies, these car agencies and major oil companies, I know it would hurt them; I definitely know that.

Senator KEFAUVER. You don't mean it would hurt the major oil companies?

Mr. TRAUSCHT. No; it would hurt the agents, my customers.

Senator KEFAUVER. Without revealing any names, just how would it hurt them? I think we all know.

Mr. TRAUSCHT. Well, I think their franchise would be canceled, or not renewed, or their lease canceled or not renewed.

Senator KEFAUVER. In other words, they would be given a hard time, you think?

Mr. TRAUSCHT. Yes, sir.

Mr. McHUGH. Mr. Trauscht, are some of these car dealers that you have referred to, to whom the manufacturer ships antifreeze without an order from a dealer, are they General Motors dealers?

Mr. TRAUSCHT. Yes.

Mr. McHUGH. Continue.

Mr. TRAUSCHT. During the month of October we made 6 separate deliveries of from 20 to 48 gallons of Prestone to 1 dealer, 7 separate deliveries from 6 to 12 gallons to another dealer, and 4 separate deliveries of from 12 to 30 gallons to the third dealer. When our salesman solicited larger orders and inquired why they did not buy larger quantities such as they did a few years ago, he was advised by the car agent that he, that is, the buyer, did not know how much the factory would ship them, or in some cases, they were overstocked with factory brand antifreeze.

The facts as they apply to underbody coating are very much the same as antifreeze, or perhaps better illustrate the commanding influence the car manufacturers exercise over their agencies.

In connection with both of these products, let us bear in mind that the car factories do not manufacture either. They buy them, in most cases, from the same producer as the wholesaler. Therefore, they occupy exactly the same level of trade as we do. They are not wholesalers of these products.

In the case of permanent type antifreeze, our prices are almost identical to those of the car manufactures. However, in the case of undercoating, the price situation is different. So wholesalers do have a selling price advantage over the car factories. Nevertheless, the car agencies are forced to buy from their respective car dealers.

Up to now it is fortunate that the automotive wholesaler has been able to offer a fair amount of competition to the car manufacturers

and the major oil companies. We are many in number, our operations are of a local nature, we are in a position to offer attractive services—and we are, perhaps, on a friendlier basis with our customers. Hence, our competition is a threat to the achievement of a monopoly by the car manufacturers and major oil companies.

Curtailed of this competition by coercive practices will aid in the creation of a monopoly.

At this point I wish to inject that there is a school of thought among many small-business men which maintains that coercive selling and enforced business procedures are all right as long as the subjects of this system are the recipients of nice profits. This thinking could be the outgrowth of an expression by an ex-General Motors Government official, which in substance meant that anything which was good for them was likewise good for the country.

I submit that this thinking is grossly in error, because the principles of liberty and free enterprise are much deeper than dollar profits. If dictatorship is good in this business, why not in politics, why not in religion? What is good for big business is not necessarily good for the American people.

The creeping paralysis of this economic dictatorship should be stopped now. It has already existed too long. If General Motors, Ford, Chrysler, and the major oil companies can force their customers to bow to their selfish wills, if they can exercise a dictatorship, what is wrong with a political, religious, or union dictatorship?

Again, they will argue that it is being done for the benefit of their customers. In answer to that, we say that there should be no room for beneficent autocracies.

During several visits with the folks at the Federal Trade Commission and Justice Department, we were told they did not have sufficient funds to gather evidence and enforce the fair-trade laws. It was further suggested that our industry should appropriate the moneys necessary to hire the investigators to gather the evidence of these violations.

These are fine suggestions, but difficult for us to put into effect.

Senator KEFAUVER. You mean you were told that down at the Federal Trade Commission?

Mr. TRAUSCHT. Yes, sir.

Senator KEFAUVER. To go out and get your own evidence?

Mr. TRAUSCHT. Yes, sir.

Senator KEFAUVER. When were you told that, and by whom?

Mr. TRAUSCHT. That was in 1946 or 1947. If I remember, it was Mr. Wright, who was in charge of enforcement.

Senator KEFAUVER. Mr. Wright, who was in charge of enforcement in 1945 or 1946?

Mr. TRAUSCHT. Yes; he suggested it. We were told that they did not have sufficient moneys appropriated to them to police the cease and desist orders, or the Clayton Act.

And in the conversation, or the discussion we had in the Federal Trade Commission's office, that suggestion came out from Mr. Wright, that our industry should appropriate the moneys through our association or otherwise, to gather evidence and present it to them or to the Justice Department.

Senator KEFAUVER. He was the chief enforcement officer of the Federal Trade Commission?

Mr. TRAUSSCHT. That is right; yes, sir.

Mr. HALFPENNY. They requested that we furnish the specific evidence and take all the lead as to any violation, which you can readily understand is very difficult for private industry to do, and it is not our prerogative or our right, I don't think.

Senator KEFAUVER. In other words, to do that you would have to have a chance of seeing the books and invoices, shipping orders, and things of that sort?

Mr. HALFPENNY. That is right. I think Mr. Trauscht will confirm why he didn't want to come down. He felt on these occasions we have received what we termed a complete turndown.

Isn't that correct?

Mr. TRAUSSCHT. Yes. I am sorry to say so, but it is a waste of time to come here and complain about something that we think we are justified in complaining about. In my testimony before this committee, I suggested that if the law was no good, let's get rid of it.

Senator KEFAUVER. You are talking about your testimony before the committee in the 80th Congress?

Mr. TRAUSSCHT. That is right.

Senator KEFAUVER. Well, I think that a lot of you have been coming down here a long time and talking and complaining, and nothing much does happen, so I think there is a good deal of justification for your attitude. But we hope that in some way or another we may reverse that trend. There are a lot of us who would like to.

Mr. TRAUSSCHT. I hope so, sir.

Mr. HALFPENNY. I might say that the automotive industry, Mr. Chairman, it has resulted in the Commission, instead of taking action against the major vehicles manufacturers, it has also resulted in the action being taken against these small independent manufacturers of our industry who, if put out of business, will not even make a ripple in the economic surface.

Senator KEFAUVER. Will you explain that a little further? I am not sure I follow you.

Mr. HALFPENNY. Well, as a result of complaints which have been made in the automotive industry especially, the only complaints that have been issued in the last 8 or 10 years by the FTC have been against independent manufacturers, very small in volume, that are competing with General Motors. They say that they are engaged in discriminatory pricing, and issuing cease-and-desist orders against them. And most of them, their defense is, what they are doing is trying to stay in business against this large vehicle manufacturer.

Senator KEFAUVER. Can you be more specific? What small companies are you talking about?

Mr. HALFPENNY. I can name them. They are cases pending now. I have named them in my previous testimony: Whitaker, Moog Industries, Niehoff, P. and D. Manufacturing, Standard Manufacturing, those are among some that have been cited and had orders issued against them that they have had to carry into the courts, and they are now in the circuit courts of appeal, or some place along the line of litigation.

Mr. McHUGH. What type of violation are these companies charged with, Mr. Halfpenny?

Mr. HALFPENNY. They are charged with price discrimination of granting a warehouse distributor's discount, or discounts to gain dis-

tribution, which they claim is a violation of the existing Robinson-Patman Act. Their defense is that that is necessary to get the availability of parts against these major companies.

Senator KEFAUVER. Go ahead, unless Senator Dirksen has some question.

Mr. TRAUSCHT. I was going to make a compliment to the absent Senator, that is my next line.

Senator KEFAUVER. Go ahead and read that. He deserves a compliment. If you have another line there for the present Senators, we would be glad to have it.

Mr. TRAUSCHT. It is necessary for me to concentrate a little in order to remember how to pronounce that name properly, because I don't want him to get mad at me.

Senator KEFAUVER. He is not here, so he won't care.

Mr. TRAUSCHT. Senator O'Mahoney's proposal is that Congress raise the present \$50,000 maximum fine for a criminal antitrust violation and prevent corporations from paying penalties for their convicted officials sounds like an excellent idea, and I believe it would be a step in the right direction. From my very limited layman's viewpoint, it has always occurred to me that our laws were adequate. However, there was a lack of coordinated enforcement, primarily because of a lack of sufficient funds to get the job done. A small-business man is not seeking the favor of preferential treatment from his Government. He only asks for justice under the law. We are, however, concerned with being relegated to the business limbo suffered by small operators in other industries. If we are, one of the primary reasons will be that our Government has failed to give us the protection its laws were designed to give us.

In conclusion I wish to thank you very much for your time, and I hope out of these hearings will come greater prosperity for all Americans.

Senator KEFAUVER. Senator Dirksen.

Senator DIRKSEN. Mr. Chairman, I would like to ask Mr. Halfpenny whether these cases he referred to of the Federal Trade Commission are pending at the present time.

Mr. HALFPENNY. Yes; they are, Senator. Some of them that I mentioned have received cease-and-desist orders, and they are appealing those to the courts, and a number of them are still pending in front of the Federal Trade, and none of them against the major vehicle manufacturers.

Senator DIRKSEN. Mr. Chairman, I suggest by incorporation in the record at least we ought to get a synopsis of the documents that are involved and the orders that have been entered, so that those will be before the committee.

Mr. HALFPENNY. I have those. And I will make them available to Mr. McHugh. I have them in my briefcase.

Senator KEFAUVER. Check them for additional ones, and let them be made part of the record so that we can have the complete record.

Mr. HALFPENNY. I think that would be helpful.

Senator KEFAUVER. I think that it would be, too.

I take it, then, sir, that you feel that there is some dereliction all the way around, that we ought to do a better enforcement job, Con-

gress ought to appropriate more money so that we will have more sizable staff to enforce the antitrust laws; is that the way you feel about it?

Mr. TRAUSCHT. Yes, sir. I feel exactly toward this Clayton Act—I think that it is the right act I am talking about—that if it is no good, if the Clayton Act is wrong, if it is ethically and morally wrong, then we should junk it. I don't think it is. I think that the small-business man should be given some protection, because the small-business man, either singly or collectively, is unable to cope with the giants of the industry as they have grown in America. It so happens that I am a good customer of General Motors, I buy a lot of merchandise from them, from two of their divisions. And it may seem like a paradox that I should sit here and complain about them while I am their customer. It really isn't. I do business with them on lines where the pressure isn't exerted.

Senator KEFAUVER. That is, competitive lines?

Mr. TRAUSCHT. Yes, that is right.

Senator KEFAUVER. Well, I think it is a mighty fine thing for the public that you are willing to come down and tell us about these things. If it ever got to a place where there was such economic pressure that people like you would not be willing to testify, we would be in a very poor plight in the country.

Mr. TRAUSCHT. I would like to state again, gentlemen, that the pressure is not on the folks like myself. They have no way of exerting pressure on people like myself, for example, because our purchases are divergent in nature; we buy from a lot of suppliers. We are not dependent upon only one supplier. The person to whom the pressure is applied is that operator who is dependent upon them for their major source of supply, in other words, the gasoline service-station operator, unless he does business with Standard Oil, if that is the franchise he has, unless he has gasoline to sell, he is out of business. And if the man is a car dealer, be it General Motors, Ford, or Chrysler, he likewise is dependent upon them for the major part of his supplies, and if he doesn't receive them from them, he is out of business.

Senator KEFAUVER. What kind of company is the Evanston Automotive Co.?

Mr. TRAUSCHT. We are wholesalers of automotive parts, equipment, and supplies.

Senator KEFAUVER. How big a business is yours?

Mr. TRAUSCHT. We operate in Evanston, Highland Park, Waukegan, and Libertyville.

Senator KEFAUVER. In volume, how big a business?

Mr. TRAUSCHT. Not quite three-quarters of a million sales volume.

Senator KEFAUVER. All right, sir.

Mr. McHUGH. Mr. Trauscht, have you ever had any experience which would indicate that the General Motors Corp. has exerted this kind of coercive selling with reference to other items, say, such as radios?

Mr. TRAUSCHT. Oh, yes. I haven't been in touch with a condition in recent years like that, but several years ago a very good friend of mine that was one of their dealers had 80 radios shipped to him which he didn't order. How I know that is, he tried to have me take them off his hands for a price, thought I could dispose of them.

He offered them to me for 50 cents on the dollar, 50 percent of what he paid for them. I asked him, "Why were you so goofy to buy them?" Knowing him, I could talk that way to him.

He said, "I didn't buy them, they shipped them to me."

Senator KEFAUVER. Can you give us any other instances of that kind?

Mr. TRAUSSCHT. I think if the record could be properly explored, you would find the situation the same when it comes to almost any competitive article. They frequently ship them mufflers and oil-filter elements, items of that kind, without a specific order, at least that is the complaint I have heard from various dealers.

The information I am passing to you gentlemen I get from the dealers, they are the ones that tell me these stories. And they are our customers.

As I remarked in my paper, we are on, perhaps, a friendlier and a closer basis with some of these dealers than the factory is themselves.

Senator KEFAUVER. You have the human element, the personal touch.

Mr. TRAUSSCHT. Yes, sir; we are close to them, we live in the community, frequently belong to the same club, meet them in the same saloon.

Senator KEFAUVER. Is that in times past or at present?

Mr. TRAUSSCHT. On occasion, up to this day.

Mr. HALFPENNY. As far as Mr. Trauscht is concerned, it has been in times past.

Senator KEFAUVER. Well, we are grateful to you.

Anything else, Mr. McHugh?

Mr. McHUGH. No, that is all.

Thank you, Mr. Trauscht.

Senator KEFAUVER. Senator Dirksen is going to preside.

Senator DIRKSEN (presiding). Is Mr. Morris here?

STATEMENT OF G. C. MORRIS, EXECUTIVE DIRECTOR, AUTOMOTIVE WHOLESALEERS OF TEXAS

Senator DIRKSEN. Mr. Morris, would you like to present your written statement to the committee?

Mr. MORRIS. Yes, sir, if I may.

My name is G. C. Morris. I am executive director of the Automotive Wholesalers of Texas, composed of 471 wholesalers of automotive equipment, parts and accessories. The association offices are in the Perry-Brooks Building at Austin, Tex.

At the outset of this prepared statement, let me make this point clear: I am present here today at the request of the committee. The membership of the organization which I serve is concerned with and affected by the business policies of General Motors, but their concern is not limited to this automobile manufacturer alone. While I shall direct my remarks to certain aspects of General Motors policy and practice, I do wish to be fully understood that comparable information could be presented regarding other major manufacturers in the automotive field.

Senator DIRKSEN. This is a trade association, isn't it?

Mr. MORRIS. Yes, sir.

Senator DIRKSEN. Limited to the State?

Mr. MORRIS. Yes, sir.

Our problem, stated pointedly, is this: The independent automobile parts wholesalers—or jobber—is, in this greatest era of prosperity of the automotive age, being systematically, deliberately, and effectively driven out of business. The net profit has shrunk in the last 12 years from 15 percent to 2½ percent, before taxes.

As testimony before other committees of Congress indicates, this systematic elimination of the independent parts wholesaler is not wholly the handiwork of the automobile manufacturers. Major gasoline refiners and marketers are also involved, on a grand scale. That fact is most important but I shall not dwell upon it here.

Senator DIRKSEN. Mr. Morris, did you have a larger membership than 471 at one time?

Mr. MORRIS. This is the largest membership we have had.

Senator DIRKSEN. Those are all active members of the trade association?

Mr. MORRIS. Yes, sir.

Obviously, independent automobile parts wholesalers have a selfish interest in this subject. We, if I may use that term for purposes of convenience, are competitors in a competitive business, and we recognize that without risk there could be no gain. We are not asking or proposing that any of the powers available to the Congress or to the executive branch be used to eliminate or reduce for us our risk as competitors; likewise, we do not solicit legislative protection for the status quo.

What we are interested in coincides, we believe, with the public interest, for our prime concern is to hold to the right to compete. That is the right we are losing and the loss of that right means the loss of fair opportunity for us, as businessmen, to function in a competitive society.

From other sources, more expert than any at my disposal, this committee has, I am sure, secured already ample documentation of the import of the automotive industry in our present American economy. I shall not attempt to supplement your mass of data on that subject.

I do feel that the point is worth making that the dominant role of this one industry necessarily makes more noteworthy and essential careful study of the patterns and behavior regarding competitive practices in the automotive field. If there is no room in the automotive industry for independent businessmen, small or large, then the question rises as to whether there is to be in the future any real place for any independent businessmen, whatever their trade or service.

As I see it, this question is particularly important as it applies to the whole pattern of our economic organization, as an organization in which the wholesaler has performed and still performs a vital distributive function.

The miracle and marvel of the current American epoch of abundance is, if we look deep enough, not merely an accomplishment of production—it is, in large part, an achievement of distribution. All the showpieces of American free enterprise, which we hold up to an awestruck world—things like the grocery store, the drugstore, the department store, the variety store—are made possible, as functioning enterprises, by the wholesaler who brings together and keeps in reserve the commodities essential for such establishments.

Without the wholesaler, the map of America's prosperity and abundance would look quite different. There would be luxury near the

centers of production, and a high-priced drabness in centers remote to our factories. If the channel of distribution were direct from assembly line to store shelves, our whole economy would suffer; the low prices characteristic of competition would dissolve; regional inequities would result, differing standards for differing regions. Other adverse consequences would be many.

I mention this because, objectively, the role of the wholesaler is so cloaked in anonymity and so buried under decades of casual misrepresentation that it is often difficult to arouse appropriate interest in his economic position and problems. It is well to keep before us the simple fact that the wholesaler fulfills an urgent function in the making of competitive prices at the retail level and an equally valuable function in the supplying of the variety of tastes, wants, and needs which characterize American buying.

Taking what I have related as background, I believe the problem of our segment of the wholesaling business acquires a new perspective. For most American families, ownership and maintenance of the family automobile—or, maybe I should use the plural, automobiles—is a major financial concern, year in and year out. The automobile is virtually indispensable to most families and their standard of living.

For this reason, the maintenance of such transportation—through parts replacement, new tires, new batteries, and other replaceable equipment—is a tremendous market, separate and apart from the new or used automobile market itself. It is, in fact, a captive market, for in most of the purchases the owner has no reasonable option but to buy what he needs to replace a part or accessory no longer usable.

For many years—indeed, since the automobile came into common use—it is this market which the automotive wholesaler has served, through countless outlets: The corner garage, the dealer's service department, the service stations, and all the rest. In this field, the public has been protected against exorbitant and unreasonable pricing policies and unsatisfactory standards of quality by the vigorous competition among independent businessmen and service institutions involved.

Today that competitiveness is disappearing. It is of concern to the public to look at what is happening.

From both ends of the line, you might say, the manufacturer and the gasoline marketers are gradually closing in on the independents, seeking to make the public their captives.

The process is quite simple. By their control over the outlets for parts, accessories, tires, and batteries, these major business concerns are able to exert indescribable pressures to force the holders of their franchises to provide the public with those parts or other items in which the majors have a financial interest.

Mr. McHUGH. In this connection, what type of pressures have been described to you by your jobbers concerning the pressure exerted by General Motors Corp.?

Mr. MORRIS. I would say, Mr. McHugh, that I don't believe you could talk to a jobber in Texas who would not tell you that it is common practice for the car manufacturer to pressure his dealer to buy exclusively from him. And the same situation, as I point out, exists insofar as the major oil companies are concerned; in fact, there has been some testimony from service-station operators in Washington recently that that was going on in that industry.

Mr. McHUGH. Do you know of any specific ways in which they are reported to exert such pressure?

Mr. MORRIS. Well, yes, I do. Of course, a franchise to be a Chevrolet dealer in Dallas, Tex., is a pretty good franchise. The traveling representative, the manufacturing representative of General Motors, the Chevrolet branch of the General Motors, if he finds merchandise in the place of business that was not bought from GM, it is common practice for him to suggest to the dealer that it would be a good policy if he would buy exclusively from them, or else he might go look to the independent jobber for warranty on the motor or some other part that they have been given the warranty on, and even suggesting to them, of course, that they might not have their franchise renewed.

Mr. McHUGH. Have General Motors car dealers reported to your jobbers that this threat of cancelation is sometimes used to induce them to purchase exclusively from General Motors?

Mr. MORRIS. I think almost any citizen of this United States could walk into a car dealer and confidentially get that information from him. I don't think he could get it before this committee.

Insofar as techniques are concerned, I think the most flagrant practice is that of advertising to the public that certain parts are "genuine"—implying that other brands, even though standard nationwide, are inferior or unsuitable. I have with me certain advertisements and other materials which I would like to place in the record illustrating this common advertising technique. One needs only turn, however, to any popular magazine or newspaper or watch television to see this advertising claim made.

Actually, this business of representing certain parts as "genuine" parts is one of the most fraudulent advertising campaigns ever foisted upon the public.

Mr. McHUGH. Mr. Morris, do you mean that this is something you have already placed in the record?

Mr. MORRIS. I will place it in. Here are two examples of it.

Mr. McHUGH. I wonder if you would describe for the subcommittee what these exhibits are, and tell us just what the import of them is.

Mr. MORRIS. This is a page ad which is in the current issue of the Life magazine, in which there is advertised a piston showing it to be a genuine Chevrolet part. To my way of thinking, that is unfair advertising, because, to my knowledge, Chevrolet is not making that piston; in many instances it is made by the same manufacturer who makes pistons that are sold to the independent automotive wholesaler.

As I will point out later on, the only difference is that it may be in a different colored box or package and have a different name on it. But the same engineering, the same know-how in making it, has to go into both of them. And it is further effort, I think, on the part of General Motors to maintain and keep for themselves a captive market for every dollar that goes for the maintenance of an automobile.

Mr. McHUGH. Mr. Morris, do you happen to know whether or not the parts in question there actually bear on them a stamp "genuine" or the name General Motors?

Mr. MORRIS. I do not know whether that is true or not.

Ordinarily, as I understand it, they are on the box, but not on the article itself.

Mr. McHUGH. And the same item that General Motors is distributing is, in many cases, made by a manufacturer who is selling in the replacement market the same product through normal sales channels?

Mr. MORRIS. Yes.

Mr. McHUGH. And this advertisement then creates the impression that only can you get the genuine thing if you buy through General Motors?

Mr. MORRIS. Yes.

Mr. McHUGH. Will you continue, please.

Mr. MORRIS. A large portion of replacement parts are not made by General Motors. Their source of supply is the same source as the independent wholesaler. It is an established fact that the manufacturers of automotive parts make their commodities available to the wholesaler and car assembler alike. In many instances, the same manufacturer furnishes the same part to both sources for distribution—the only difference being the color of the box or package and the name placed thereon. The same specification, design, and engineering is used in the manufacturing of automotive wholesale parts for both wholesaler and car manufacturer.

For reasons known only to them, however, the Federal Trade Commission has occupied itself with many pursuits but never with the major manufacturers' deliberate misrepresentation of their parts as the only genuine parts.

The profit to be made from selling this idea to the public is obviously enormous. It should be pointed out, however, that the public stands to suffer. If the car owner is ultimately denied any right of selection in choosing parts, batteries, and so forth, then he has no competitive protection regarding quality.

The lucrateness of the replacement-parts market, great as it now is, could be increased manyfold by downgrading the wearing quality of such replacements, causing car owners to buy 3 or 4 or 5 replacements for parts which now may be replaced only once in the lifetime of ownership.

Likewise, of course, a captive market—held captive by the contrived fear of nongenuine parts—is totally at the mercy of the automobile manufacturer on prices for such parts.

It is the view of most wholesalers of my acquaintance that this committee could render few services of greater value than to cause the FTC to look honestly at the misrepresentation of the so-called genuine parts advertising. Whether GM or Ford or Chrysler is involved, the abuse of the public faith and the public pocketbook obviously merits attention it has not received. In my own case, the only response I have been able to muster from the FTC has been a brushoff.

In these remarks I hope I have drawn a clear picture of the incentive to manufacturers to capture this market. The point is convincingly illustrated, I think, when we contemplate the absurdity of advertising genuine tires, for example—and the economic impact is pointed up when we suggest that the activities in regard to parts are comparable to what would happen if the manufacturers should take control of the gasoline marketers and their outlets and thus seek to hold on to every consumer dollar spent for maintenance of the vehicles they manufacture.

In this picture, as I have implied, the success of the manufacturers rests upon the use of persuasion—or maybe I should say coercion—

against their franchised dealers. This same pattern is employed by the major gasoline marketers in their relationships.

In both fields the independence of dealers or service-station operators is largely a legal fiction. The great economic stranglehold of the franchising corporation renders independence impossible and unthinkable. You will find, if you have not already found, few active franchised dealers—for General Motors or any other concern—willing to talk candidly about the pressures used forcing them not to do business with independent automotive jobbers.

I have with me some letters from two members of my association which elaborate on this point about business practices better than I could do, so I shall not attempt to document a story which few of us entertain any illusions about.

Those two letters have been turned over to Mr. McHugh.

Mr. McHUGH. Mr. Morris, I have two letters which you have furnished to this subcommittee. These are letters, I believe, from wholesalers who are members of your association?

Mr. MORRIS. Yes, sir.

Mr. McHUGH. Have we permission to make whatever use we want, for the purposes of our study, of these letters?

Mr. MORRIS. Yes, sir.

Mr. McHUGH. First, Senator, is a letter dated November 15, 1955, addressed to Mr. Morris from one of the members. And, with your permission, Senator, I would like to ask him to read this into the record, to be made a permanent part of our record.

Senator DIRKSEN. Without objection, it may be done.

Mr. MORRIS. This letter, of course, is addressed to me:

I have noticed with interest the hearings that are being conducted with reference to the operations of General Motors Corp. The following observations come from my 24 years experience in wholesale automotive jobbing, definitely in the small-business category.

It has been proven and acknowledged down through the years that the automotive jobber and his function is necessary not only in our American economy but in insuring the flow of automotive goods to the consuming public. I think the best proof of the place filled by the jobber was World War II, when hundreds of thousands of very necessary vehicles were kept on the road through the efforts of automotive jobbers. I believe all will agree that without such effort our wartime transportation, so vital to our war effort, would have deteriorated dangerously and in many areas would have been stopped completely.

Big business, and General Motors in particular, has constantly hammered at the very existence of automotive jobbers. Through the years it has become increasingly difficult for us to do business with the car dealer, a natural and traditional customer of ours. Through threats, often veiled and implied but effective just the same, the car dealer has been and is being forced to buy his merchandise other than vehicles through the car manufacturer. In the vast majority of cases, the car dealer would rather buy from his automotive jobber, whom he knows and respects and from whom he gets service and availability that he cannot get from the manufacturer. Hundreds of instances are known where the car dealer buys merchandise from his automotive jobber and literally hides it away from the car manufacturers representative, who will "put on the pressure" if he finds the dealer doing business with the jobbers. The big-business car manufacturer has intensified his "policing" efforts along this line in recent years, in addition to making available to the dealer more and more merchandise of so-called genuine manufacture.

This "use only genuine parts" campaign which has continued down through the years is obviously one of the most flagrant of violations of protective business laws of our Nation. Everybody in the automotive industry knows well, although those in high places in enforcement of our protective laws wink and shrug, that many of these so-called genuine parts are brought by the car manufacturer (or

assembler might be a better word) from the same supplier as those sold by the automotive jobber. To use one example, it would be just as ridiculous for the car assembler to advertise "use only genuine tires" as it is for him to advertise "use only genuine water pumps." He knows, and those in high places know, that neither the tire nor the water pump is manufactured by the car assembler, but rather bought from independent manufacturers.

Not only has the car assembler made it most difficult and well-nigh impossible for the jobber to sell the car dealer but more recently the assembler or car manufacturer has set up a system of rebates on sales at wholesale by his car dealer. This enables the car dealer not only to service through his own organization but to sell what few customers are left to the independent jobber at wholesale prices. The car dealer then pays one price to General Motors for example for parts if he has resold them through an independent garageman or service station. This gives the car manufacturer yet another "ax" to hold over the head of the car dealer, because only a certain percentage of total purchases from General Motors of certain parts may be reported for rebate. In effect, the car dealer is urged to buy all his requirements from General Motors because then a greater dollar volume may be reported for rebate as a wholesale sale through independent outlets. It can be readily seen that this program hurts the automotive jobber tremendously because now his customer, the independent garage or service man, may purchase at wholesale from the dealer and in addition it gives General Motors another big club to keep the car dealer from buying from the jobber.

My particular business is run as efficiently as any. The profit for the independent automotive jobber has shrunk from 15 percent before income taxes to a ridiculously low 2½ percent before taxes in the last 12 years. It was 5.2 percent as late as 1950. I feel that someone, somewhere, must recognize that thousands of independent automotive jobbers are being squeezed out of business by the pressure of big business—not by competition, which is the American way—but by unfair competition. What can a man do who has spent his entire life in building a business? Those who made our laws with reference to unfair competition knew that big business was a threat, and that our laws would be the only recourse. Where can we find someone in a high place who will not shrug or wink but who will see that the laws we already have are enforced against a situation that only the ignorant or the willfully neglectful can fail to recognize? I know this letter is long, but I'm in a writing mood today, and as you know, I could make it longer and still stay close to the subject.

Yours truly,

FERGUSON AUTO SUPPLY Co., Inc.,
FRED D. PINKSTON.

I think the other letter, Mr. McHugh—would you like for me to read the other letter?

Mr. McHUGH. I have another letter dated November 11, 1955, to Mr. Morris from one of the members of his association, and with your permission, I would like to ask him to read just the pertinent portions of it, which he knows bear upon this problem.

Senator DIRKSEN. Very well.

Mr. MORRIS (reading):

Before the General Motors program went into effect, the car dealers' discount from their respective factories was 40 percent off list on most items and 50 percent off list on the fastest moving items. We could meet these prices in those days and still come out with a small operating profit. When the program went into effect, General Motors increased their dealer discount to 50 percent on all items that could be purchased from the jobber. Their discount on items such as frames, fenders, and body parts not available through the automotive jobber remained the same or was reduced to some extent. In addition to increasing their dealer discount on parts sold through their service department, they extended an additional 30-percent discount beyond the 50 percent on all parts sold to the independent repair shop, fleet, or service station. Since it was not possible for us to meet these prices, we were dropped as a source of supply by these dealers and placed in the category as a competitor by them. About all we can sell the car dealer now is a little welding rod, paint, and perhaps a small quantity of sandpaper. This explains to some extent the statement about the General Motors program eliminating our best accounts.

Mr. McHUGH. Thank you, Mr. Morris.

Mr. MORRIS. I do think that the policies of General Motors deserve some particular attention. Prior to January 1, 1954, the General Motors car dealer could buy replacement parts from either his car manufacturer or from the independent automotive wholesalers. However, permit me to point out that agents and representatives of the car manufacturer were constantly making it plain to their car dealer that it was to their interest to trade with the car manufacturer and not the independent automotive wholesaler.

Threats of reprisal in the form of cancellation of franchise agreements were even then the order of the day. In many instances, merchandise purchased from the independent automotive wholesaler had to be concealed from the ever-watchful eye of the car manufacturer representative. Despite all of this, prior to January 1, 1954, General Motors dealers represented one of the major markets for independent automotive wholesalers. Today, that vast array of establishments is, for practical purposes, no longer a market but is, instead, virtually a major competitor.

On January 1, 1954, the General Motors plan went into effect. Under this plan GM wholesalers to its dealers replacement parts at substantial discounts—discounts with which independent jobbers can be competitive. In addition, however, GM included in this plan a direct and important discount incentive to the dealer to resell those parts in competition with the jobber—at margins the independent could not successfully match, thus creating a competitor out of a former customer. As a result of this plan, the independent automotive wholesaler can still offer for sale replacement parts to the car dealer at the same price that the car dealer can purchase from the car factory. Under the new GM parts plan, the car dealer can resell these parts to other car dealers and independent outlets and get an additional discount on that percentage of his business which he wholesales. The dealer cannot receive this additional discount unless he buys those parts from the car factory. Thus, today, the independent automotive wholesaler can compete with the car manufacturer only on his percentage of business which his customer, the car dealer, buys for the purpose of using in servicing the customers in his own service department. It is apparent from this plan that the franchised car dealer is provided with an additional incentive to give his business to the car factory and not the independent automotive wholesaler. The very obvious result is that General Motors is deliberately, systematically, and purposely seeking to capture for itself a principal share of the wholesale parts market.

If General Motors is out to secure more than 50 percent of this business, they have—in our part of the world—made tremendous headway. We have no quarrel with the size of the organization. We are not against them because they are big. We are against them because they are unfair, because they are using an economic gun in the stomach to force their dealers to do business with them, and in this way they are eliminating our right to compete.

Mr. McHUGH. Mr. Morris, have your dealers furnished you any information which could indicate the volume of business they have lost as a result of this General Motors parts program?

Mr. MORRIS. Yes; I have discussed it with many of them. I would say—and this would be a guess—that in 90 percent of the instances that I have talked to my members about this thing, 90 percent of them have stated that their business with the car dealer has dropped off considerably.

It does not mean that they are not doing more business because of this expanding market we have been talking about; but there is not any question but what they have lost a lot of business with car dealers.

Mr. McHUGH. Do your members testify they have as a result of this plan lost business from the independent garagemen and the filling station operators who may now be buying from a General Motors retail car dealer?

Mr. MORRIS. Yes. They state that they are losing it because the car dealer is buying it from the car manufacturer.

Mr. McHUGH. So the necessary consequence of this practice would be to eliminate the General Motors car dealer as a customer of your jobbers, and it would also be fair to describe your jobbers as being in the position of losing business to the General Motors car dealers when they sell to the independent garagemen?

Mr. MORRIS. That is right.

We say that the honesty of their advertising needs examination—more than it has received. We say, likewise, that their resort to coercive pressures needs examination and action. It requires no great talent to foresee the making of a monopoly.

We believe the wholesale industry fills a vital role in our society and that it is deserving of the protection of the laws governing competition. As matters now stand, we do not think the laws are adequate or that the staff available for their enforcement is sufficiently large to deal with the problem.

The American public—an automotive public, by every measure—is far too rich a prize to be allowed to fall captive to those few corporations controlling the output of automobiles. Without competition, there is no assurance against exploitation—on either price or quality of the parts and accessories necessary for automobile operation. The course now followed by General Motors is a course designed to eliminate competition, and, as such, we suggest that it is not in the public interest. If the wholesale industry is eradicated within the automotive industry, then it will, in time, be swallowed up by an economy of cannibalistic giants in other fields, too. The loss of a healthy wholesale segment of our enterprise system would remove the operation which is the foundation of today's pricing and quality and distribution practices. This is too great a loss.

I believe a thorough study by this committee would establish that while the manufacturers—along with the gasoline retailers—have sought to capture and control the replacement-part market by eliminating the wholesaler, no effort has been made to reduce the ultimate consumer cost. The manufacturers are anxious to gain—not reduce—the wholesaler's markup. They want to eliminate the wholesaler but not his margin. In other words, the ruling philosophy seems to be that what's good for the independent businessman can be made even better for General Motors—at the public's expense, of course.

Senator DIRKSEN. Mr. Halfpenny, has the question of advertising raised by Mr. Morris been probed by the Federal Trade Commission, I mean this specific question?

Mr. HALFPENNY. Yes. It had not been probed, but about a year and a half ago, after General Motors came out with this new plan, National Standard Parts filed a complaint with the Commission in regard to the "genuine," stating that it was false advertising.

Numerous of the State associations have written complaints about, as well as talked about, it; and last December at the National Standard Parts convention a resolution was passed setting forth that it was false advertising, and a copy of that was submitted to the Federal Trade Commission. But to date, so far as we know, nothing has been done.

I think you verified that, too.

Mr. MORRIS. Yes.

Senator DIRKSEN. There has then been no hearing on the subject and no disposition of the question?

Mr. HALFPENNY. Complaints have been filed, but no disposing of it or there has been no discussion as far as we know, Senator.

Senator DIRKSEN. Mr. Morris, you make the contention that if that particular thing were removed that the difficulties of the members of your organization would be mollified somewhat, at least.

Mr. MORRIS. Senator, I would say this: if that could be done, it will be about the finest service that this committee could render to the independent automotive wholesaler. It would not be the total answer, but it would be a major answer.

Senator DIRKSEN. Yes. But it actually has not been formalized and presented as such?

Mr. HALFPENNY. It has not. The complaints have been registered, but that is as far as they have gone, and everyone in our industry feel, as Mr. Morris stated here, that it is unfair advertising.

Senator DIRKSEN. Mr. McHugh?

Mr. McHUGH. Mr. Morris, you have stated how this program of advertising the genuine product has been adversely affecting the business of the wholesalers. Does this program adversely affect the business of the independent parts manufacturer?

Mr. MORRIS. Well, I cannot speak for the independent parts manufacturer, but I would say, without speaking for them, that I am sure it does.

Mr. McHUGH. Could you tell us in what way that hurts his business?

Mr. MORRIS. Well, I think the whole purpose of this genuine advertising is to impress upon the ultimate consumer, the car owner, that there is just one place to go to get your automobile fixed, and there is just one kind of part that ought to be used on that automobile, and that is the part that is distributed or manufactured by General Motors.

Mr. McHUGH. But this part is manufactured by the independent manufacturer in many cases?

Mr. MORRIS. Yes.

Mr. McHUGH. Will it make any difference to him whether or not its statement—

Mr. MORRIS. There are numerous manufacturers who manufacture those numerous items.

Mr. McHUGH. But the effect of this advertising is merely to suggest that the consumer can and should get this item only through General Motors.

Mr. MORRIS. That is right.

Mr. McHUGH. But even if the consumer is impressed by this type of advertising continues to buy it only through General Motors, it will still be made in many cases by the independent manufacturer; will it not?

Mr. MORRIS. That is true.

Mr. McHUGH. Will that then have any effect upon the volume of business which the independent manufacturer will do?

Mr. MORRIS. Well, I cannot answer that question, Mr. McHugh. I would say that it is my understanding that General Motors is more and more manufacturing their own parts as time goes on.

Mr. McHUGH. Well, it will have the effect of channeling distribution of the independent manufacturer's product through the General Motors Corp.

Mr. MORRIS. That is right.

Mr. McHUGH. So it will narrow for the independent manufacturer the outlets through which he could normally distribute his product—

Mr. MORRIS. That is right.

Mr. McHUGH (continuing). Which is the independent wholesaler.

Mr. MORRIS. That is true.

Mr. McHUGH. That is the principal effect, as you see it, upon the independent manufacturer?

Mr. MORRIS. That is right.

Mr. HALFPENNY. I think, as Mr. Morris pointed out, it is well to remember, if they channel it, then they will more and more go into their own manufacturing which will eliminate the independent altogether.

Senator DIRKSEN. Mr. Morris, I understand I am at liberty to say for the record here today, after conferring with committee counsel, that this particular item is presently under investigation by the Federal Trade Commission.

Mr. MORRIS. Fine.

Senator DIRKSEN. Thank you, sir.

Mr. MORRIS. Yes, sir.

Mr. HALFPENNY. Thank you.

Senator DIRKSEN. Is Mr. Edward Perreault in the room?

STATEMENT OF EDWARD J. PERREAULT, PRESIDENT, PERREAULT AUTO PARTS CORP.

Mr. PERREAULT. My name is Edward J. Perreault, of Troy, N. Y. I am president of the Perreault Auto Parts Corp., whose main activity is selling and servicing in the automotive replacement parts industry. We employ 23 people in various categories, and our gross volume is slightly over a half million dollars.

This volume is attained through approximately 430 regular monthly ledger accounts. I have accepted the invitation of your chairman to appear here as indicative of thousands of independent wholesalers throughout the country who are wondering what is going to happen to their small enterprises with the advent of the General Motors

announcement that they want their share of the replacement-parts business.

What is GM's fair share and how will they attain their goal? These are two vitally important and as yet unanswered questions. Quite frankly, as a small-business man, I find myself wondering what my future is in the automotive-service industry. Before General Motors arrives at its goal, I feel quite certain that many smaller wholesalers will go by the board.

Incidentally, Mr. Chairman, as a small wholesaler, I question my protection from retaliation by either authorized car dealers to whom I presently sell, or possibly even General Motors itself. I do not feel that I can place my corporation's business in jeopardy to even the slightest degree.

Senator DIRKSEN. Mr. Perreault, how long have you been engaged in the business?

Mr. PERRAULT. We have been established 32 years. I have been in it since I was 11 years of age.

Senator DIRKSEN. This has been built up from very humble beginnings?

Mr. PERRAULT. Hereditary through my family, sir.

Senator DIRKSEN. All right, sir.

Mr. PERRAULT. Price-fixing pattern: Before approaching this phase of our industry, I would like to make a supposition that can be readily substantiated by procuring complete sets of every retail, wholesale, and distributor price sheet printed since 1946 by the Big Three, and all major independent manufacturers. In so doing and by paying particular attention to the dates you will unquestionably agree that the Big Three actually set and establish not only the price but the discount for almost every automotive part. Proceeding with that supposition of price fixing we approach what I consider to be the most damaging phase of the General Motors parts program. They not only fix the selling and buying price—they have virtually forced independent manufacturers to produce a competitive product for less money than they actually receive themselves. Quality of merchandise, believe me, is identical.

Mr. McHUGH. Mr. Perreault, I wonder if, for the purposes of the record, you could explain a little bit more about the ability of General Motors and the other parts manufacturers to set the price at which the automotive parts are sold.

Mr. PERRAULT. Their method of setting—

Mr. McHUGH. How do the activities of the General Motors Corp. or the other car manufacturers, in fact, fix the price at which parts are being sold in the replacement market, let us say?

Mr. PERRAULT. I was rather—to be competitive, No. 1, they have to do it—which I am going to develop further on—Mr. McHugh, No. 1, I am trying to throw this out as a supposition which can definitely be justified in reviewing all of the dates of the price sheets item by item, date for date.

If a change is made February 1 by the major car manufacturer, within printing time the independent has to either go up or go down, but he has to remain competitive.

Mr. McHUGH. By the "independent" you mean the independent parts manufacturer?

Mr. PERREAULT. Independent parts manufacturer and independent wholesaler likewise. I mean the two of them are treated in the same category.

Mr. McHUGH. What you are saying is that the prices for these various parts in the replacement market will always be set, first, by the car manufacturer, and the independent parts manufacturer and jobber will shortly thereafter go along.

Mr. PERREAULT. That is right. It has been historic in our business all the way through, I mean in our industry, that that method be established.

And the other thing, for instance, if General Motors sets a price of \$2, it is very foolish for an independent manufacturer to peg the price at \$1.75 because of the small potential that he could gain by being 25 cents under General Motors price.

But I am trying to ride over part of this; if you will go along with me, because the actual proof can be seen in a complete set of price sheets over a period, Senator, if that is in agreement with you, sir.

Senator DIRKSEN. Yes; proceed.

Mr. PERREAULT. Again I repeat, price fixing is an actuality that can be easily substantiated. To illustrate my point, we'll take a specific car part—namely a thermostat, manufactured and distributed by independent automotive outlets at an actual discount on all levels. I use this particular car part as an example because General Motors changed the entire pricing structure on thermostats. The thermostat has a retail price of \$2. The discount to the independent garage operator is 50 percent, or his cost of \$1. The discount to the distributor in turn is 50 percent and 30 percent, or his cost of 70 cents. Please remember, that 100 percent of the independent manufacturer's product is sold at 70 cents because of his normal distribution pattern.

Now then we approach the General Motors plan and find that when the Chevrolet Motor Car Division sells the same thermostat to a franchised Chevrolet dealer, it is sold at \$2 less 50 percent, or a cost of \$1. The Chevrolet dealer, in turn sells this same thermostat to John Doe's service station at \$1. The dealer then reports the sale to General Motors for his wholesale compensation and receives a functional discount of 30 percent, or a rebate of 30 cents on the transaction. Therefore, in this instance, General Motors actually sold the thermostat for 70 cents to the Chevrolet dealer.

Herein lies the crux of the entire situation. General Motors sets the price and discounts. The independent manufacturer must, of necessity, remain competitive on all levels and accept the GM pricing schedules. Unfortunately, 100 percent of the independent manufacturer's product is sold at 50 and 30 percent, or 70 cents, while only a percentage of General Motors' sales are made at 70 cents. Regardless of what percentage of General Motors' sales are at the wholesale level, General Motors is actually receiving more than 70 cents "across the board." This percentage factor is strictly dependent upon the percentage of wholesale sales made through General Motors outlets. GM could actually receive anywhere from 76 cents to a high of 88 cents for a thermostat that they themselves "pegged" at 70 cents through independent wholesaler levels.

Gentlemen, somewhere along the line of either independent manufacturing or wholesaling, there is a point of no return. With this type

of formula in existence, I, as an independent wholesaler, have an awful lot of worry about.

Captive parts: "Captive parts" are those items that are peculiar to and manufactured only by the original car assembler. If General Motors allowed a 50-percent discount to garagemen on a highly competitive item such as a thermostat, why isn't a discount of 50 percent allowed on a "captive" item?

For a specific example, a short block assembly carries a discount of only 15 percent. If General Motors had no ulterior motive, why not set a standard discount for all items they manufacture and/or sell? I am certain, from a business-management point of view, that it would be more economical to work with one set of discount schedules on all items. Variable discounts are used by General Motors dependent upon competition. Remove competition, and even the thermostat will carry a 15-percent discount.

Gentlemen, believe me, it is not the independent distributor or the garageman who will suffer—we have lived to learn and earn through many different cycles of competition within our industry. Who will suffer? The millions of carowners who will eventually bear the brunt of this vicious approach.

Two percent cash discount angle: The granting a 2-percent cash discount is historic in our industry. Independent parts manufacturers have always been aware of the general policy of automotive wholesalers to extend this 2-percent discount to their garage and service-station customers as an incentive to maintain collections on a safe and secure credit basis. Along comes General Motors and announces to the UMS, AC and GM parts independent wholesalers that the traditional 2-percent cash discount will no longer be allowed. In its place, General Motors stated "We are going to give you a brandnew compensation which will be better." I seriously question the period of survival of this so-called substitute compensation. It is still stated in percentages, but that can easily be modified and the distributors will have very little defense. If the intention of GM were to make it "better" for the distributor, then why not just give him 3 or 5 percent for cash discount instead of 2 percent? How does this affect a distributor who does not handle General Motors products? It opens the door for our independent suppliers to think in the same vein and consider the possibilities of removing the much-needed 2-percent discount terms.

In 1954 the average net profit, after taxes, for automotive distributors ranged from 2.06 to 3.61 percent. With 2-percent cash discount removed from quoted net profit figures, the bottom of the barrel can now be seen from all angles.

Mr. McHUGH. Mr. Perreault, does your company purchase from the United Motors Service?

Mr. PERREAULT. No; we do not purchase from the United Motor Service, the AC division, or General Motors.

Mr. McHUGH. You then do not handle any General Motors lines?

Mr. PERREAULT. No, sir.

Mr. McHUGH. So your company would not have been in any way affected by this elimination of the 2-percent discount for cash by General Motors?

Mr. PERREAULT. Not immediately.

Mr. McHUGH. What you are suggesting is that this may become a practice in the industry, and that, in turn, may affect you with other manufacturers?

Mr. PERREAULT. Yes. I am going into it right now to cover that point, Mr. McHugh.

Removal by General Motors of the 2-percent discount which, from its inception, has been traditional within our industry, is just further proof of their strength in the automotive-service industry. This may answer part of your question.

Any other competitive automotive manufacturer attempting this move would have suffered a complete disruption of collections and cancellation of contracts.

Mr. McHUGH. Excuse me, Mr. Perreault, let me ask you this.

Mr. PERREAULT. Yes, sir.

Mr. McHUGH. If General Motors Corp. was the only one to offer this 2 percent cash discount, wouldn't that enable the independent manufacturer to get a competitive jump on GM or United Motors Service?

Mr. PERREAULT. Well, they presently transferred the 2 percent into an additional compensating fund going into that 3- and 5-percent bracket; but I am emphasizing the fact of their still keeping it in a percentage figure and, in the complexity of our business, our pricing structure, quite often an article is moved from a percentage basis to what we term a "net price."

Now, of a given item, let us say there are 2,000 items manufactured by this 1 company. As soon as they put it into the classification of a net price it is almost physically impossible for a wholesaler to figure out that item 1 is at 50 and 10; item 2 is 50 and 3; in other words, we would have to retab all of them, and, frankly, the average wholesaler has not the facilities to do it.

Secondly, the other factor that is involved is of the 2,000 items that are produced by this manufacturer on the price sheet; possibly only 200 of them, or 10 percent, are actually sold by us.

The third phase of the 10 percent, the heaviest percentage of our sales as a wholesaler might end up in the 19-percent bracket; so, on the overall sheet they could show us a profit percentage of 35 percent. But if I did not happen to sell as a wholesaler, if I did not happen to sell those exact items in the same ratio as the manufacturer used in arriving at his 35 percent, I can never attain—I will put it this way: the 35 percent is the ultimate that you can reach on the sheet; but in all probability you will be dwindling down below that 35.

Now, whether General Motors has it in mind or not, I have not the faintest idea. I do know it is historic in our business when something is kept in percentages and then transferred to net prices, the wholesaler definitely suffers; he has always suffered, and he will always suffer.

Mr. McHUGH. Is it true when the General Motors Corp. eliminated the 2-percent cash discount, they changed to some sort of a net pricing system?

Mr. PERREAULT. No; they moved it into a different bracket and they gave them other qualifications which, as a United Motors distributor, I am not qualified to answer.

But they did take the 2 percent from one bracket and move it into another which, in actuality, hinges very closely on Federal Trade Commission's—

Mr. McHUGH. Their explanation is that by eliminating the cash discounts, they nevertheless compensated the buyers, in other words.

Mr. PERREAULT. In other words, they told the buyer, "Don't worry about losing the 2 percent because we are giving it right back to you."

Mr. McHUGH. What you are saying is that can be done in manners which are difficult to detect and, in fact, the buyer is not getting the advantage of this discount?

Mr. PERREAULT. The biggest defense that a wholesaler had was to preserve his 2-percent cash discount. Now they got over that hurdle and took it away from him. All of this on the other side are used to losing 1 percent here and a half percent here through what we term a net-price dodge; and at a later date it could very easily be moved over.

The main point I am emphasizing is that they did get over that one historic break on the discount, and it is a temptation to the rest of the independent manufacturers or all manufacturers within our industry; it is a temptation for them.

But to clarify that point, I would like to review back as to the feelings of our independent manufacturers as of right now.

During the spring of 1955, the National Standard Parts Association conducted a survey of independent manufacturers with regard to the 2-percent discount remaining in effect. More than 84 percent replied to the questionnaire, and 96.5 stated that they were following the traditional cash discount. They further stated that they had no intentions of making a change. If the industry as a whole is that united, why then must General Motors attempt to draw an entirely different picture?

I give General Motors credit for their excuse or reason—call it what you wish—when they removed the 2-percent discount from wholesalers. General Motors stated that in view of its pricing policy to its authorized car dealerships (which heretofore never received a cash discount), GM did not consider it lawful to sell on one level with 2-percent discount and on the other level without this 2 percent. There is one big difference that GM failed to point out. The car dealer has to purchase his car from General Motors. No money—no cars. The car dealer's incentive to pay General Motors promptly is a guaranteed constant flow of both cars and captive items. This condition is not so in the independent automotive market because of the tremendous duplicate sources of supply.

Diminishing gross profit: Gross profit seems to be the major attack thrust upon the independent distributors. The national average for 1954 ranged from 28.7 to 32 percent. The gross margin of profit is invariably higher for the smaller wholesaler. With full knowledge of gross profit necessary to keep the independent distributor in a liquid state, or sufficiently profitable, to perform all the services required of our complex industry, does it not seem logical that if General Motors pegs resale and cost slightly below national gross profit averages, that eventually they can dry up the working capital of the independent wholesaler? To illustrate my point, I would like to furnish you with a complete breakdown on a particular part, namely, a muffler, for a particular car—Chevrolet. This breakdown presents a very

clear picture of the before and after entrance of GM into its expanded parts program.

Mr. McHUGH. Mr. Perreault, who makes this muffler you are about to describe now for General Motors? What we are really concerned about is whether or not it is really made by the car divisions of General Motors or made by outside sources.

Mr. PERREAULT. There is a percentage that is being made by General Motors themselves. At this point I would say that it is the minor percentage; but they have been in the process in the last year to 2 years of setting up a sheet rolling mill to get into the muffler production.

Those figures I do not believe would be actually available to anyone of us on the outside. I would almost guarantee you that the smaller percentage is being guaranteed by them. [Reading:]

Chevrolet: In 1953 the Chevrolet dealers were purchasing their mufflers at 47-percent discount from Chevrolet's list and resold to the independent trades at a recommended resale of 35 percent. This grossed the Chevrolet dealer about 20 percent on this sale.

In 1955 the Chevrolet dealers purchased mufflers at a discount of 45 percent from Chevrolet's list and are told to sell at this 45-percent discount to the independent trades. When they do this, General Motors give the Chevrolet dealers a 25-percent functional selling commission.

The same muffler, independent manufacturers:

In 1953 the independent manufacturer's resale was set at 35 percent from the Chevrolet list, accruing a 35-percent gross profit to their wholesalers.

Mr. McHUGH. You are speaking of the independent manufacturer who is making this muffler for Chevrolet?

Mr. PERREAULT. In this particular case I am speaking of an independent muffler manufacturer making it for distribution through independent wholesalers in this second case, such as myself.

Mr. McHUGH. Are you speaking of a comparable muffler or the exact—

Mr. PERREAULT. The exact same muffler. [Reading:]

This profit was increased by the amount of quantity discount allowances by the wholesaler on his purchasing habits. The wholesaler could sell to the car dealers at the same price level as the car dealer purchased from his factory and make a gross profit of 21.5 percent, plus his quantity discount purchases.

In 1955 independent manufacturer's resales are set at 40 percent from Chevrolet's list, accruing the distributor 27 percent plus his quantity discounts. When the wholesaler meets the competitive price of Chevrolet to the independent trades, he grosses 23 percent plus his quantity discount.

Mr. McHUGH. Mr. Perreault, I just wonder if you would explain in simple nontechnical terms, if you will, what you think the effect is of this pricing structure which you have just described.

Mr. PERREAULT. Well, as a wholesaler if I can redraw that complete comparison, getting into the independent manufacturer's field, that is on the top of page 7, as a wholesaler, prior to 1953 or the advancement of this superduper parts program, as a wholesaler I was grossing 35 percent on the Chevrolet muffler.

As a direct result of their pricing program, I am automatically reduced down to 27 percent. That is the only thing I am interested in is the difference between 35 percent, which I enjoyed, and 27 percent which I have to suffer with, and I am fortunate in one respect, that our area is not a real large metropolitan trading area, because if I were located in New York, Chicago, Washington, D. C., I would in

all probability have to sell that muffler with just a 23 percent gross profit.

It is dependent on the activity of the Chevrolet car dealer in a particular trading area and, quite naturally, the more metropolitan the area is, the larger the Chevrolet dealer who is more actively interested in this program.

So if he is out competing, at the real low price on a Chevrolet muffler, a wholesaler to remain competitive must sell it to his garageman or service station, and just realize a gross 23 percent profit on it.

Mr. McHUGH. Are you saying as a result of the new discount which you were allowed, the so-called super discount by General Motors under the wholesale parts plan, that this had the effect of forcing you, as an independent wholesaler, to obtain the same or similar type goods from independent manufacturers at a lower price and lowered the amount of profit which you made in reselling such products?

Mr. PERREAULT. It lowered the price on the dealer level, but it jacked up the price on the wholesaler level; in other words, there is just so much in a pie.

Mr. McHUGH. It lowered the discount to you?

Mr. PERREAULT. It lowered the discount to me, and the discount had to be lowered because if I am selling a muffler at wholesale at \$4, and General Motors sells it for \$3.50, I have got to be a wonderful salesman to sell even 1 of them at \$4; I have to sell them at \$3.50, so the squeeze comes in two places: The wholesaler suffers a little of the squeeze, the independent manufacturer has to absorb part of the squeeze, and the two of us together get keeping that—there is still enough room left.

Do you follow me on that difference of 35 percent before the plan went into effect against selling at either 27 or 23 percent? In other words, economically I had no choice in the matter; I just had to sell my product at the end of it. The consumer is still paying his own weight on this whole deal.

We started off at a level of maybe \$7.50 retail, and through the manipulation of discounts in either trying to protect their wholesaler or their own production line, all of a sudden it sneaks up to \$7.95.

In any one of these changes that I have seen in our price sheets, whether it occurs immediately or with inside of 6 months or a year at the maximum, the retail price is finally adjusted, and the retail price is the one that hits the consumer's pocket.

Taking into consideration the rise for basic costs and material and also labor, there are still other fluctuations that are going to influence price manipulation.

Mr. McHUGH. How are the discounts that have been adopted by General Motors under this new wholesale parts plan affecting the prices at which these goods are being sold at retail? What has been the net effect in the retail market?

Mr. PERREAULT. Well, they are trying to find room for the discount procedure that they started off with right in the very beginning and, I believe, it is my own summation that possibly there is not enough room now with the percentage bracket they wanted to work in, so they may possibly be gradually rising—gradually they may possibly be raising their retail prices.

Now, this retail price rise is a gradual thing. I mean, gentlemen, you have to bear in mind one thing: our business is complex in that in any one of the lines we handle we are involved with a minimum of 150 to 2,000 stock numbers all on one line; and the average wholesaler, the man in business, we just receive those sheets and we put them in our book, and that is the order of the day.

Frankly, none of us has time to draw down complete comparisons as to whether an armature went up in one particular category or an armature went down in another category, but there is a definite set pattern to their increases, and their increases are not across-the-board increases. They are increases which are strictly headed for the highly competitive items where they felt that they were losing or in a second category where it is a captive item. There they have a free rein.

If you wish to purchase a fender for a General Motors car you only have one company that you can go to, and if the price is set for \$45, and you take a look at it and it is worth about \$35 in your own estimation, if you want it you still pay \$45. It is the independent manufacturers that have held the line down; we are still fighting all the way through.

Mr. McHUGH. Why is it that the independent manufacturers are not able to make the so-called captive parts?

Mr. PERREAULT. Not being a manufacturer, I should not answer that question. As a wholesaler I will throw out just a little projection of thought. First of all, you have got engineering, the cost of setting up your equipment, the cost of setting up your distribution, and you have got to find a user for your product.

Let us assume I wanted to make that fender. Mostly 85 percent of those fenders would end up in General Motors' hands; so if the car dealer who is presently closed out from buying on the outside—I have got no market, and a captive item is invariably a good type of item that always returns somehow or other to the car dealer.

Mr. McHUGH. Isn't that the answer then, that the captive part generally is the type of thing which will almost, of necessity, have to be replaced by the General Motors car dealer? It is that type of item?

Mr. PERREAULT. To a great degree, yes. I mean, like a short block, for example, that is a very good example.

I would imagine that General Motors makes all of their short blocks, and it is one item, if you want it, they have one set schedule, and that is it. They do not care particularly much one way or another; that is the schedule discount that they have set on that short block.

If you happen to have a cracked block, and it cannot be welded or repaired or anything else, you have only one field that you can go to. They know that if you need a block, you are going to return home; they know that for sure.

Now, it is true that you can go to the dealer, purchase your short block and then have an independent repairman install it for you. But invariably, through their advertising they are still funneling "bring your car back home," which is another separate phase of advertising.

Mr. McHUGH. Well, would another reason be the fact that these parts generally involve tremendous capital expenditure in tools?

Mr. PERREAULT. That is right. In other words, say like Chevrolet's production of an automobile, they might push through 2,000 in a day;

they are in very good shape. Nobody will ever beat General Motors on automation, automation production, because they have a guide. They know exactly how many they are going to use. Then they can run a percentage that will be resold in an aftermarket situation.

But they can reduce, they can find out exactly how much that fender is going to cost them before they even start producing because they know the average percentage of cars they are going to produce during that given year.

Mr. McHUGH. So they can keep their unit cost down to a very bare minimum.

Mr. PERREAULT. That is right; so that nobody can ever beat them on it. It is just physically impossible; and even if you outengineer them and outproduce them, you still need the end user. So if the end user cannot buy from you, you have got no market.

It is the old expression, "I got salt. The salesman was good, but I still got salt," and I would have fenders if I ever attempted to go into it.

That brings out, speaking of salt brings out, the last phase of it, turnover.

This part of my presentation, Mr. Chairman, is merely a projection and by no means an accusation. Having been in the industry since I was 11 years of age, I could say that I have grown with it, lived by it, and started to enjoy the fruits of my efforts. The tree has just begun to bear fruit, and I will fight to protect my life's investment.

I have always been very conscious of stock turnover which is actually the lifeline of our business. National averages, throughout our industry, have historically indicated that a three-time stock turnover is essential to profit. Our company presently carries over 16,000 different stock numbers of items. These are procured from approximately 175 different manufacturers. Considering 16,000 items alone, I do not have to remind you how complex and difficult it is to maintain a profitable three-time stock turnover.

There is one thought that constantly runs through my mind—are all these yearly changes in our car models necessary? Or is this part of a master plan to prevent independent wholesalers from achieving the stock turnover they require for survival?

Specifically, to service our customers and remain on a level with competition, my company, just a week ago, had to add 82 stock numbers on exhaust system parts covering 1955 applications, while finding only 31 numbers no longer required because of "old age."

Year after year, repetition of this same pattern will actually force the average automotive wholesaler out of business. The wholesaler will lack either sufficient capital or physical storage space. Of late, every year, drastic changes in style, model, and engine specifications have occurred. As essential stock numbers increase, turnover quite naturally has a tendency to decrease. There exists a very good chance of making it physically impossible for most distributors to remain in the automotive service industry except the extremely large and well-financed corporations.

Then again, large corporations cannot function properly or perform the service that is required in outlying communities. The smaller towns must, of necessity, be serviced by small independent whole-

salers—yet the present pattern seems to almost completely eliminate them.

Mr. McHUGH. Are you saying by that, Mr. Perreault, that the increasing number of model changes is multiplying the different items which you have to carry and, therefore, it is not possible to get your three-time turnover?

Mr. PERREAULT. No, because if I start off with 300 tail pipes in 1955, and I start increasing at the rate of 80 to a year, and returning 31 a year, over a period of 5 years I will have accumulated an additional 250, in addition to my 300. If I am just maintaining a three-time turnover now, it will be physically impossible.

We have, as a service industry—we definitely have—to carry sufficient stock, and demands on the wholesaler are in many cases greater than on a car dealer.

Incidentally, the car dealers' general plan is to cut back their stock on either a 5- or a 7-year basis. **In other words, everything beyond 1950, they cleared from their parts room.** That has been a pattern, and that pattern I am almost sure continues.

If it were allowed to continue, after that part becomes 5 or 7 years old, the car becomes 5 or 7 years old, people do not necessarily want to junk their cars so they have to rely on independent wholesalers such as ourselves carrying that slow-moving item to keep their car on the road.

If I no longer have a place of business, they cannot get that 10-year-old or 12-year-old part, and the cars will be headed for the graveyard sooner than people would like them to be.

The main responsibility on older parts, believe me, gentlemen, falls with the independent manufacturers and wholesalers.

Mr. McHUGH. Well, is it necessary in this business for the independent wholesaler to stock this complete line of different parts? Couldn't he just carry a portion of it and not be required to take on all of the parts that are part of the manufacturers' line?

Mr. PERREAULT. Well, the mechanics of doing business today, if it were not only from a competitive standpoint, we would actually still be forced to.

We built up a relationship with our customers that we can service them at all times, and it is not the type of business where I can say, "I will take the mufflers; Joe, you take the exhaust pipes, and someone else this."

I mean our business is not designed that way and could never be split up. We do have specialists, but it is never defined quite that broken down.

To compete with our own competitors, in our own industry, we have to rely on having the merchandise on our shelves; and again, at the same time, we have to have the merchandise on our shelves to prevent our independent customers from going to the car dealer, because we do not want to start breaking him in going there as much as we possibly can.

Frankly, he relies more, an independent relies more, on an independent wholesaler than he does a car dealer, except for captive items.

Mr. McHUGH. It is your feeling, then, that the increasing emphasis upon model changes necessitating a great variety of new parts which have to be stocked by the wholesaler is gradually causing this business

to be so expensive and requiring such big capital investment that only the very largest of wholesalers will be able to continue in it?

Mr. PERREAULT. The largest of wholesalers are the Big Three who are presently setting up warehouses all over the country. Overnight they could eliminate a lot of their functions, their inbetween middlemen. But the economy of our country has always been built through wholesaling, even though quite often you may consider a wholesaler as that inbetween man increasing the cost of the retail price; but a wholesaler performing his function is entitled to that price, and by performing it, the retailer will never object, providing the wholesaler performs the functions correctly.

Senator DIRKSEN. Thank you, Mr. Perreault.

Mr. PERREAULT. Thank you very kindly for your time.

Mr. McHUGH. Thank you very much.

Mr. HALFPENNY. Mr. Chairman, those are all the witnesses National Standard Parts in the replacement industry has to offer, but we told the committee prior to this meeting that any other information we would be helpful in obtaining we would be glad to get for them.

Senator DIRKSEN. We will be glad to submit it for the record.

The hearing will resume tomorrow morning at 10 o'clock in this room, room 457, and there is a list of 5 or 6 witnesses for tomorrow.

(Whereupon, at 4:30 p. m., the subcommittee recessed, to reconvene at 10 a. m., Tuesday, November 22, 1955.)

A STUDY OF THE ANTITRUST LAWS

TUESDAY, NOVEMBER 22, 1955

UNITED STATES SENATE,
SUBCOMMITTEE ON ANTITRUST AND MONOPOLY
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met, pursuant to recess, at 10:20 a. m., in room 457, Senate Office Building, Senator Joseph C. O'Mahoney presiding.

Present: Senator O'Mahoney.

Also present: Joseph W. Burns, chief counsel; Donald P. McHugh, assistant counsel; Joseph A. Seeley, assistant counsel; and Robert H. Amidon, legal staff member.

Senator O'MAHONEY. Mr. McHugh, are you ready to proceed?

Mr. McHUGH. Yes, Senator.

Senator O'MAHONEY. Who is the first witness?

Mr. McHUGH. We have this morning three representatives of E. L. Schofield, Inc., a manufacturer of heaters in Rockford, Ill. Three representatives of that company are here, Mr. E. L. Schofield, the president; Mr. C. F. Story, vice president; and Mr. W. W. Brown, sales representative.

These three gentlemen would like permission to present their story together in the event that some problems come up that one or the other cannot answer.

Senator O'MAHONEY. Well, it is good to have it in triplicate. All right, Mr. McHugh.

STATEMENT OF E. L. SCHOFIELD, PRESIDENT, E. L. SCHOFIELD, INC., ACCOMPANIED BY C. F. STORY, VICE PRESIDENT, AND W. W. BROWN, SALES REPRESENTATIVE

Mr. McHUGH. Mr. Schofield, you have a prepared statement that you would like to use?

Mr. SCHOFIELD. Yes, sir.

Mr. McHUGH. Will you state very briefly the name of your company, what business you are in, and something of your background?

Mr. SCHOFIELD. You mean from the text?

Mr. McHUGH. If it is in your text, why don't you just read it?

Mr. SCHOFIELD. E. L. Schofield, Inc., is in the business of manufacturing and selling automotive hot water heaters. One of our important lines is custom heaters for Chevrolet passenger cars, orders for which are solicited from retail dealers throughout the United States.

Senator O'MAHONEY. Before you go further, Mr. Schofield, when was this company incorporated?

Mr. SCHOFIELD. The company was incorporated in 1945.

Senator O'MAHONEY. 1945?

Mr. SCHOFIELD. Yes, sir.

Senator O'MAHONEY. Where does it operate?

Mr. SCHOFIELD. Rockford, Ill.

Senator O'MAHONEY. How large a plant does it have?

Mr. SCHOFIELD. At present it employs between 50 and 60.

Senator O'MAHONEY. What State was it incorporated in?

Mr. SCHOFIELD. Delaware.

Senator O'MAHONEY. It is a Delaware corporation operating in Illinois.

Mr. SCHOFIELD. Illinois; yes, Senator.

Senator O'MAHONEY. Are you the president?

Mr. SCHOFIELD. Yes, sir.

Senator O'MAHONEY. How long have you been president?

Mr. SCHOFIELD. Since the inception.

Senator O'MAHONEY. How large a company is it in the way of stockholders and capital stock and the like?

Mr. SCHOFIELD. There are two stockholders. The authorized capital is \$100,000.

Senator O'MAHONEY. A small company?

Mr. SCHOFIELD. Small company.

Senator O'MAHONEY. The water heater that you manufacture is what?

Mr. SCHOFIELD. Pardon, Senator?

Senator O'MAHONEY. What is this hot water heater that you make?

Mr. SCHOFIELD. It is a hot water heater for passenger cars. I have covered it pretty much in the text of this report, if I may read on.

Senator O'MAHONEY. Very well; all right.

Mr. McHUGH. Mr. Schofield, excuse me, at this point will you explain for the subcommittee what you mean by a custom heater for Chevrolet passenger cars?

Mr. SCHOFIELD. The term "custom" as applied to automotive accessories means a component that will install into a specific vehicle without any prime mechanical work such as drilling holes, cutting metal, or so forth. It is designed specifically to install in a certain vehicle.

Senator O'MAHONEY. In other words, you are a tailor for Chevrolet.

Mr. SCHOFIELD. The word "tailored" is good. They all apply particularly to the art we are in.

Late in 1954 we announced a new model heater designed for the 1955 Chevrolet car and almost immediately began to receive orders for substantial quantities from established Chevrolet dealer accounts. Shortly after the first of the year, however, sales diminished drastically.

Upon investigation it was found that General Motors zone and district managers in certain major metropolitan areas were refusing to approve orders for 1955 Chevrolet cars without factory-installed heaters.

The situation soon became so bad that we found it necessary to lay off employees and to divert our efforts to other products and for other markets in order to keep our business alive. In the meantime our sales organization has dissipated simply because salesmen could not make a living due to General Motors' practices.

Mr. McHUGH. Mr. Schofield, will you explain for the subcommittee what type of a sales organization you had maintained up to this time?

Mr. SCHOFIELD. We sell through manufacturers' agents who handle our products, along with other related products in the automotive field. Selling independently, they only represent themselves, I would say. They are not our own men; they are manufacturers agents.

Mr. McHUGH. You do not then distribute through a line of independent wholesalers or jobbers?

Mr. SCHOFIELD. No, sir.

Mr. McHUGH. Now previous to this time you mentioned in 1954, had you been selling a custom-line heater to the Chevrolet division for Chevrolet cars?

Mr. SCHOFIELD. We had sold a custom-built Chevrolet heater for the 1954 model which was sold through the calendar year 1954. Then, as our report states, late in 1954 we announced our 1955 model.

Mr. McHUGH. The first time that you sold the custom Chevrolet heater was in 1954?

Mr. SCHOFIELD. In the strict sense of the word, yes, a custom heater for Chevrolet. Our first model was in 1954, a 1954 model.

Mr. McHUGH. Did you start selling in the beginning of that year 1954?

Mr. SCHOFIELD. Early in 1954, yes; about February or along in there, right.

Mr. McHUGH. What success did your sales efforts meet at that time?

Mr. SCHOFIELD. We had such good success at our level of operation—I am speaking as a small manufacturer—and our sales acceptance was so encouraging among Chevrolet dealers that we endeavored and did expand our selling program throughout the 1954 calendar year.

This success was what prompted us to continue and to develop a heater for the 1955 car.

Mr. McHUGH. What were your total unit sales in 1954 of this custom Chevrolet heater?

Mr. SCHOFIELD. Between five and six thousand units.

Mr. McHUGH. Well, based upon the success of your sales in 1954, what were your projected plans for sales in 1955?

Mr. SCHOFIELD. We projected a minimum quantity of Chevrolet heaters to run at 20,000, with anticipated sales based on our efforts upward of 50,000. When I say minimum, we had to have a minimum to support our design and tooling program that we used for our 1955 model.

Mr. McHUGH. When you were selling these heaters to Chevrolet dealers in 1954, at that time was the Chevrolet company installing the Chevrolet heater at the factory?

Mr. SCHOFIELD. In 1954 the Chevrolet division did not install any heaters in their dealer-delivered cars. I would say from a practical standpoint they delivered the cars 100 percent without heaters to the dealers in 1954.

Mr. McHUGH. For how long had that practice been in existence with the Chevrolet division?

Mr. SCHOFIELD. To the best of my knowledge, from the date of Chevrolet's origin; they had never installed heaters in the car as a production policy up to and through 1954.

They, of course, installed them in demonstrators and show cars, naturally, for their own exhibiting, but for sales purposes they did not install heaters in cars through 1954.

Senator O'MAHONEY. What heaters did they install in their own cars for show purposes?

Mr. SCHOFIELD. The heater which their own division manufactured and offered to the trade through the dealer.

Senator O'MAHONEY. Well, I do not quite get the picture, Mr. Schofield. If you say that the Chevrolet cars were delivered to the dealers 100 percent without heaters, I do not understand why General Motors would be manufacturing a heater for the Chevrolet for show purposes alone.

Mr. SCHOFIELD. The heater was and has always been treated as an elective option, as it is termed in the trade. The customer has the right to order or not order a car with a heater, and, therefore, the car is priced and offered without a heater; and General Motors offers an accessory in the form of a heater, the same as a radio or fog lights, spotlight, what have you, as an accessory.

Mr. McHUGH. Is there a heater that is made by General Motors Corp.?

Mr. SCHOFIELD. Yes, sir.

Mr. McHUGH. What division?

Mr. SCHOFIELD. It is the Harrison division of General Motors.

Mr. McHUGH. Previous to this time, the General Motors Corp. was not installing this Harrison radiator which was made by a division of General Motors at the factory?

Senator O'MAHONEY. It is a heater, not a radiator.

Mr. SCHOFIELD. Yes.

Senator O'MAHONEY. The cars that were shipped by the division to Chevrolet dealers over the country were sent without heaters because the offer was made to purchasers, and the decision was left with them, whether they would take a heater or not?

Mr. SCHOFIELD. That is right.

Senator O'MAHONEY. Therefore, the dealer was free at that time to buy your heater?

Mr. SCHOFIELD. Right.

Senator O'MAHONEY. You had no contract or understanding with General Motors for the sale of your heater?

Mr. SCHOFIELD. No, sir.

Senator O'MAHONEY. Your sales were with the dealers?

Mr. SCHOFIELD. Right.

Senator O'MAHONEY. And you stepped into this field at the time your company was organized because at that time it had been the practice for the Chevrolet division to ship their cars without heaters?

Mr. SCHOFIELD. That is right.

Senator O'MAHONEY. All right; proceed.

Mr. McHUGH. In 1954, at this time you were first making access into this market, was there a shortage of heaters?

Mr. SCHOFIELD. No, sir.

Mr. McHUGH. Heaters were available?

Mr. SCHOFIELD. That was our big selling block we had, that apparently General Motors—I have to choose my words carefully here—General Motors saw to it that the dealer had at least 90 days' supply of heaters on hand in advance of his anticipated car sales.

So when we first entered the direct dealer selling program, we were always walked out into the parts department and shown a big room full of heaters in anticipation of cars which they would order later on.

We accepted that as a natural challenge and had no argument against that. That explains a rather slow start in the field in 1954 because they had to work off their 90-day inventory before they could take our heaters.

Mr. McHUGH. Mr. Schofield, what would be one of your principal sales arguments in attempting to get the General Motors car dealers to buy your heaters when they had stocks of General Motors heaters available?

Mr. SCHOFIELD. The same thing that affects every individual in his everyday walk of life, his saving money.

Mr. McHUGH. Will you explain what the difference in price between your heater and the General Motors heater was.

Mr. SCHOFIELD. The difference in price is a little difficult to pin down to the actual last dollar and cent because of the way in which they list their accessories, but I would say it runs between a bracket of a low of \$17 to a high of \$20 savings. We have difficulty getting figures from dealers as to just what their actual savings are.

Senator O'MAHONEY. Well, was your heater priced cheaper than the Harrison heater?

Mr. SCHOFIELD. Yes.

Senator O'MAHONEY. How much cheaper?

Mr. SCHOFIELD. Their heater price to the dealer was around \$46 in round figures, and our price was around \$30 in round figures at that time.

Senator O'MAHONEY. So what you offered the Chevrolet dealer was a cheaper heater—

Mr. SCHOFIELD. In price; yes.

Senator O'MAHONEY. In price. I knew what you were going to say.

Mr. SCHOFIELD. I did not mean to be presumptuous, Senator.

Senator O'MAHONEY. Not at all; that is perfectly all right. We are just gathered around the table to try to get the facts, Mr. Schofield.

Mr. SCHOFIELD. I might say that while we have a little humorous vein here, it is not out of order that sometimes policies take paths that are not intended.

During one of my sales trips into the good southern part of our country last February I was in a city in Georgia, namely, Metter, Ga. I was giving my sales, we might say, pitch to a Chevrolet dealer.

Senator O'MAHONEY. That is a good word.

Mr. SCHOFIELD. And he informed me of a rather interesting incident which he had just experienced that previous week. With no reference to various religious faiths nor will I mention the faith because it might be misconstrued, although I respect them highly, he had a good customer who felt that she should not have a car with a heater because it was a luxury of life that the saint of her faith should not have. I might say parenthetically I think the climate had something to do with her convictions, but nevertheless she chose a car without a heater.

This dealer found it impossible to secure a car without a heater from the General Motors Corp. Therefore, in order not to trespass upon the four freedoms which we uphold so staunchly in our great country, it was necessary for him to attempt to remove the heater from the Chevrolet car so as not to interfere with her religious convictions.

I do not question the subject corporation for trying to interfere with religious freedom, but it shows how ridiculous sometimes a policy can become.

Senator O'MAHONEY. Well, really the story puzzles me now more than ever. If the dealer found it difficult to remove the General Motors heater from the car, how do you explain your statement that Chevrolet cars were delivered to dealers without heaters?

Mr. SCHOFIELD. I explained that very thoroughly in this text here. I can go back to it now or I can come to it if you want me to.

Senator O'MAHONEY. Well, this was not one of those cars?

Mr. SCHOFIELD. This was a 1955 car; I am speaking of—

Senator O'MAHONEY. Oh, I see now.

Mr. McHUGH. Will you explain for the Senator what change took place in the General Motors policy with reference to the installation of heaters at the factory?

Mr. SCHOFIELD. In 1954, in the fall of 1954, which was the announcement of the 1955 model, in October, a Chevrolet dealer showed to me an announcement from General Motors that through January all cars would have factory-installed heaters; after January the cars would be available without heaters. That did not materialize in a large portion of the United States. The policy continued that they installed the heaters in the cars. Is that what you wanted?

Mr. McHUGH. Yes.

, This policy, you say, continued all through 1955?

Mr. SCHOFIELD. In the majority of the United States, right. There were areas where it was possible to secure cars without heaters.

I would like to, if I may, continue with this; I think I will bring out some of the things we are discussing here.

Mr. McHUGH. Go ahead, Mr. Schofield.

Mr. SCHOFIELD. So that the committee will understand the situation, we want now to describe and compare the General Motors Chevrolet heater with the heater for Chevrolet cars which we manufacture. We have prepared several pictorial sheets to illustrate basic facts about heater construction and installation.

A hot-water heater, as it relates to a passenger car, has no functional relationship to the car engine, chassis, or car body. Its prime function is that of passenger comfort, and for safety by providing defrosting for the car windshield. The heater uses hot water from the car engine and it has been established by many years of use that this has no adverse effect on the car-engine operation.

We state this simple but basically important fact to establish at the outset that the use of a Schofield heater in a car or truck, regardless of the make of the car or truck, has no adverse effect on the vehicle operation nor does it affect the customer as far as car warranty is concerned.

If this fact is denied by General Motors, then it is inconsistent because it does not apply that reasoning in connection with its truck heaters. Practically all trucks are delivered by General Motors to its dealers without factory-installed heaters. Any argument that heaters should be factory-installed in passenger cars must, in fairness, apply also to trucks.

The simple fact is, in our opinion, that General Motors knows it can force factory-installed heaters in the sale of passenger cars to dealers,

whereas, for competitive reasons, it cannot insist on factory-installed heaters in trucks.

Schofield has designed a heater that provides the maximum in comfort and safety. By using only the best components, it gives assurance of satisfactory performance. This has been accomplished within the limits set up by the car manufacturer in the space and installation room provided for a car heater.

To protect the dealer, fleet operator, and individual customer, Schofield has made all basic components interchangeable dimensionally with General Motors heater parts, so that a dealer can use Schofield parts in a General Motors heater and, conversely, so that General Motors parts can be used in a Schofield heater, thereby rendering a service to its customers.

Mr. McHUGH. Mr. Schofield, do you obtain some of the parts you use in your heaters from the same sources from which General Motors obtains theirs?

Mr. SCHOFIELD. We believe that is correct, depending on conditions; they undoubtedly change their sources from time to time, so they buy at times from several of the sources we do.

We believe the following pictorial pages show how Schofield has developed its heater to meet its trade requirements.

Schofield uses standard automotive-type heater motors. We buy our motors from the same motor manufacturers that supply other heater manufacturers for the industry. Electrical characteristics and hour-life factor are the same as, or better than, motors used in competitive makes of heaters.

In the matter of blowers, we use a standard Torrington blower wheel the same as other heater manufacturers; and we believe this blower is the best available for cars and trucks.

The cores used in Schofield fresh-air heaters are made to the highest standards. Cores are all-copper, seamless water tubes; construction is of the accepted cellular type; Schofield cores are tested at 30 pounds pressure per inch, and we know of no automotive heater cores which are more carefully made.

Schofield heaters use a positive direct-action type waterflow valve. This valve is practically trouble free and is the most dependable valve we have tested. Control is quick and positive, and is easily operated by the driver.

The heater control switch used on Schofield heaters is made by the same firm that supplies switches for car heaters to several car and heater manufacturers.

I would like to digress here for a moment because since this report was prepared, I made an Eastern swing around the country on business, and last Wednesday I was in Boston, Mass.

I contacted a switch manufacturer from whom we have been purchasing switches since 1948. I contacted the gentleman regarding the manufacture of a new switch for us for our 1956 heater.

Mr. McHUGH. What is the name of this switch manufacturer?

Mr. SCHOFIELD. It is the Aetna Motor products firm.

Mr. McHUGH. Where are they located?

Mr. SCHOFIELD. Boston, on Freeport Street.

Mr. McHUGH. You had been purchasing switches from this company for several years?

Mr. SCHOFIELD. Since 1948.

I contacted their Mr. Brandt in the sales department, telling him I was in Boston and I would like to discuss a new switch for our 1956 heater.

He supplied me with information which temporarily, shall we say, rocked me.

Mr. McHUGH. Excuse me, is this a switch for any particular type of heater that you were making?

Mr. SCHOFIELD. It was going to be for the 1956 heater we were building for Chevrolet cars.

Mr. Brandt said to me, "Mr. Schofield, I am sorry we cannot supply you with switches for your heaters."

I said, "I don't quite understand you." I said, "We are talking about a switch for our particular product. We want to get a quotation from you on tooling and unit price."

He said, "I would like to do it for you, but we have been informed by the purchasing department of General Motors Corp. that if we supply switches to any other heater manufacturer, they will cancel their business with us."

I said, "Does this involve around a patent?"

He said, "No, there is no patent involved whatsoever; there is no mechanical novelty in the switch. It is a switch of our own basic design."

I said, "Why then can't you continue to supply us?"

He said, "I wish we could, but we have to eat, and you must admit that their business is much more important to us than your business."

Mr. McHUGH. Did he state the name of the person in the General Motors purchasing office who had told him this?

Mr. SCHOFIELD. He did not disclose it. He said it was the assistant purchasing agent, and he would not disclose his name.

Mr. McHUGH. Was that the assistant purchasing agent in the Chevrolet division?

Mr. SCHOFIELD. In the Harrison division, I would assume.

I might say we were shocked, as a small firm. We have enjoyed a nice relationship with this supplier for a number of years. I think it is not American to do such things, but the small manufacturer is constantly facing that situation as the noose tightens and tightens upon him by the pressure of power of large manufacturers.

Mr. McHUGH. Mr. Schofield, did the General Motors Corp. own the dies or the tools that the Eetna Co. used in the manufacture of this switch?

Mr. SCHOFIELD. I presume they own the dies and the tools for the switch they bought from Aetna, but we were asking for a new switch made off of tools which we would pay for to perform a similar function, which is simply turning on and off an electric motor.

Mr. McHUGH. Did you own the dies for the switch they were making for you?

Mr. SCHOFIELD. Well, they refused to quote on it. In other words—

Mr. McHUGH. No, I mean previously.

Mr. SCHOFIELD. No, before then we were buying what is termed a stock switch, a catalog number.

Mr. McHUGH. Why do you presume General Motors owned the dies for the new switch?

Mr. SCHOFIELD. That is standard practice in the trade. When you have a special switch made, you pay at least a partial tooling cost of the special component.

Senator O'MAHONEY. Did you ever do that?

Mr. SCHOFIELD. Yes, sir.

Mr. McHUGH. Did you offer to pay for the tools and the dies that would be used in the manufacture of this switch for you?

Mr. SCHOFIELD. Yes, sir. That is our—we follow that, of course, because we have to secure products, and we pay for tooling.

Mr. McHUGH. Did the General Motors Corp. in its catalog advertising represent that this switch that was made for them by Aetna was a particular General Motors designed switch?

Mr. SCHOFIELD. There is no reference to the switch in their advertising because it is such a minor part of the product that there would be no mention of the switch as such. That is why we are so surprised that there would be such a policy on such an insignificant part. I think it is a forerunner of what they would do if they could control everything.

Mr. McHUGH. Do you want to continue?

Mr. SCHOFIELD. Yes.

In relation to the water hose, for instance, which is the only relationship between the car engine and the heater, Schofield heaters use the same sources of supply that are used by General Motors and all other manufacturers of their heater hose. Our hose is standard automotive quality heater hose, and the water hose clamps also are standard quality.

I, with all due fairness, will have to state that we are buying our water hose clamps from a General Motors division at present, so I will give them credit in that respect.

Electrical wires, terminals, and control cables are all secured from identical sources that supply the industry. All Schofield heater components are standard quality secured from industry-recognized sources of supply.

This sheet simply establishes that our heater is not a compromise product, and we are justly proud of our merchandise.

In regard to construction, the question may be asked how we, a small concern, can compete with General Motors, a large firm.

We ask no quarter as far as size is concerned. General Motors designed their components for large volume production.

The illustration shows how they make their heater case out of deep drawn cases, require comparatively expensive tooling, which is proper as far as their production requirements are concerned.

In the lower half of this sheet we show how we build a similar case. It is made up of a relatively large group of parts; they are all of simple manufacture, and require low tooling costs. The net result is the same. We get a tin box that holds the components; but this sheet is presented on how we can be in the field and serve the trade with a product in small production.

On the next sheet we simply show, without going into any detail, that the connection between the heater itself and the car engine is in the same general manner as for a General Motors or any other heater which would be installed in the Chevrolet car.

We simply show this to show there is no effect on the performance of the car or the engine by use of a Schofield heater.

Now we come to an important sheet in the report. I would like to have this to be given careful consideration because it is quite important. It is headed "Defrosters." These are the things that deliver the hot air from the heater to the windshield.

Either by intent or oversight, Chevrolet engineers developed a defrost system for the wraparound windshield that was practically impossible for the dealers to install in their 1955 cars.

This was the first time such a design approach was taken, and it was not consistent with the offering of car heaters as an elective option, as it almost precluded the heater installation by the dealer if he used General Motors heaters.

This is the only reason why it was impractical for dealers to install heaters in the 1955 Chevrolet cars.

In all other aspects, the 1955 General Motors heater installed just as easily as in previous years when the dealer installed all heaters.

Chevrolet has corrected this condition in their 1956 heater-defrost.

When Schofield engineers saw that it was not only impractical but expensive laborwise to install the 1955 Chevrolet heater-defrost, we developed a novel snap-in defrost design which completely eliminated the trouble. This design gave the same four-point defrost layout as used on the General Motors heater and was quick and easy to install.

Mr. McHUGH. Mr. Schofield, what is there about this 1955 type of defrost that would make it difficult or impossible for the dealer to install?

Mr. SCHOFIELD. This defrost manifold, being practically the whole width of the windshield, is some 4 feet in length, and in order to install after a car is delivered it is necessary either to drop the steering gear or remove the instrument panel from the car, which, of course, involves excessive labor, with possible damage or scratching to the new-car components.

Mr. McHUGH. This would make it virtually necessary that this type of product then be installed at the factory?

Mr. SCHOFIELD. Correct. The reason I say it was either by intent or oversight I do not believe—it is presumptuous to say that possibly General Motors could make a mistake. They lacked about a half to three-quarters of an inch of enough clearance to install the unit. It looked like they intended to go in, but they did not quite make it.

Another half to three-quarters of an inch, and they would have had enough clearance to install the unit after the body was on the chassis. But I do not want to go on record as saying that I would ever question the foresight or knowledge of a General Motors engineer in any respect. So I would be willing to say it was by intent, because to say it was oversight would question their ability and judgment.

The next sheet simply shows, documents, the fact that the Chevrolet division in 1955 classified the heater as an accessory. They price it as an accessory, along with some 40 or 50 other items that were available through the car dealer at the option of the customer or dealer to select. There is no need to dwell further on that.

The next sheet is simply a copy from the Automotive Daily News, which shows that car dealers made it a policy of pricing the car without a heater. This is important because it involves a Government ruling.

Senator O'MAHONEY. What Government ruling?

Mr. SCHOFIELD. Could you give me that verbatim, Mr. Story? It is in the report here. Please. It is on the sheet here; it is the Clayton Act (15 U. S. C. 14)—it is the Federal Trade Commission, then, a cease-and-desist order which was ordered in 1942; I was wrong on that.

Senator O'MAHONEY. Issued against what practice?

Mr. SCHOFIELD. Pardon?

Senator O'MAHONEY. Against what practice was it issued?

Mr. SCHOFIELD. Against the practice of forcing dealers to take accessories against the order or wish of the customer or dealer.

In other words, this ruling, this cease-and-desist ruling, has the 5 points outlined on page 8, if you will turn over, Senator, to page 8.

Mr. McHUGH. I believe, Senator, Mr. Schofield is making reference to the Federal Trade Commission order in the case that Mr. MacDonald of the Commission described.

Senator O'MAHONEY. I assumed that was the case, but I wanted to see whether that was his understanding.

Mr. SCHOFIELD. Yes.

Senator O'MAHONEY. So that the record would be clear. You have on one of your exhibit pages here what appears to be a price information circular or catalog issued for 1955 Chevrolet cars.

Mr. SCHOFIELD. Right.

Senator O'MAHONEY. This is entitled, by whoever prepared the exhibit, "Heater Classified as an Accessory."

So your point is that when the 1955 Chevrolet was advertised in the dealers' price book, the heater was specifically set forth in the price book as a passenger-car accessory; is that right?

Mr. SCHOFIELD. Yes, sir.

Senator O'MAHONEY. Did that mean the purchaser had the option of taking the heater or not?

Mr. SCHOFIELD. Yes.

Senator O'MAHONEY. Do you also want the committee to understand that the cease-and-desist order of the Federal Trade Commission required General Motors to abandon the practice of requiring dealers to take cars with General Motors heaters?

Mr. SCHOFIELD. Yes, sir.

Senator O'MAHONEY. It was under that state of facts that a Federal Trade Commission order had been issued that you built your business of selling accessories, heaters as accessories, to Chevrolet dealers?

Mr. SCHOFIELD. That is right.

Senator O'MAHONEY. And although the price in the book for 1955 Chevrolet advertised heaters as accessories, as a matter of fact, they were not accessories; they were installed, is that right?

Mr. SCHOFIELD. Right.

Senator O'MAHONEY. When a car came from the factory?

Mr. SCHOFIELD. Right.

Senator O'MAHONEY. Thank you.

Mr. SCHOFIELD. Yes, sir. For what importance it has, we have cut some ads out of newspapers and advertising brochures of General Motors Co. in which they illustrate both cars and trucks without heaters.

Senator O'MAHONEY. Well, that is just illustrating the point that you made previously?

Mr. SCHOFIELD. That is right.

Senator O'MAHONEY. In response to my question?

Mr. SCHOFIELD. That is all. I am just using that to illustrate—

Senator O'MAHONEY. I think you can skip those.

Mr. SCHOFIELD. Yes.

On page 8, I say that our sales—

Senator O'MAHONEY. We will have them placed in the committee files.

(The pages referred to will be found in the committee files.)

Mr. SCHOFIELD. Our sales by March 1955, had deteriorated to the point where the situation was discussed with legal counsel who advised us that the practice of forcing the sale of heaters (listed by General Motors as optional equipment) as we alleged, if true, would constitute a violation on the part of General Motors, of section 3 of the Clayton Act (15 U. S. C. 14).

Mr. McHUGH. Mr. Schofield, I wonder if you could tell us to what extent these sales of custom Chevrolet heaters had deteriorated by March of 1955.

Mr. SCHOFIELD. By March of 1955, they had about reached the zero level. We started out good on our advance announcement to the trade, to receive advance orders, and everything was encouraging. But, as our report will bring out, we received cancellations and requests to cancel, refusal of shipments from the first of the year on to where we found it necessary to take some action by March, and we engaged legal counsel to discuss the matter with General Motors.

Mr. McHUGH. By March of 1955, were you getting any orders from Chevrolet dealers for your type of heater?

Mr. SCHOFIELD. Mr. Story, you are more familiar with the actual picture.

Mr. STORY. Well, I do not recall the day-by-day situation there, but if there was any business at all, it was such a dribble that it would really not be significant.

Mr. McHUGH. Do you want to continue, Mr. Schofield?

Mr. SCHOFIELD. We were further informed, by legal counsel, that in 1937 General Motors was charged by the Federal Trade Commission with just such practices and that a cease-and-desist order was issued in 1942, following some 5 years of investigation and involving approximately 30,000 pages of testimony. General Motors undertook to have the order set aside by appealing to the circuit court of appeals. However, with minor modifications, the order was sustained. As modified, the order specifically prohibits General Motors from:

1. Requiring automobile dealers, through intimidation or coercion, to purchase and deal in accessories sold by General Motors;
2. Canceling, or by implication threatening to cancel, dealer franchises for failure to so purchase or deal in General Motors accessories;
3. Canceling, or threatening to cancel, franchises of dealers using accessories not designated by General Motors;
4. Shipping unordered accessories and supplies to dealers and threatening cancellation of franchises for failure or refusal to accept unordered accessories;

5. Refusal, or threatening refusal, to deliver automobiles for failure or refusal of dealers to purchase or deal in General Motors accessories.

Our attorneys prepared an abstract of reports furnished us by our salesmen in which names and locations were omitted because they had been given us in confidence. This abstract was submitted to L. H. Bridenstine, General Motors, general counsel's office, at the time of a personal conference March 24.

Senator O'MAHONEY. What year?

Mr. SCHOFIELD. 1955.

Senator O'MAHONEY. Thank you.

Mr. SCHOFIELD. Sections of this report covering dealers in a number of States are herewith presented to the committee. In the interest of brevity we are leaving out portions of this abstract concerning dealers in the Chicago area, as W. W. Brown, a member of our Chicago sales agency, will report on some of his experiences in that territory.

The report informed General Motors that prior to January 1 of this year, E. L. Schofield, Inc., had manufactured, sold, and distributed a number of automobile heaters for installation in the 1955 Chevrolet models. Commencing in January of 1955, a number of dealers returned to our factory heaters they had purchased for sale and installation in the 1955 Chevrolets. Immediately inquiries were made to determine why these heaters were being returned. Inquiries were also made as to the extremely sharp drop in sales. Among the replies received are the following excerpts from correspondence.

I would like to pause here for a moment and say that we respect the confidence of our customers. It costs money to develop sales outlets. We enjoy a good relationship with our customers, and they have been most free in telling us honestly why they could not take our heaters. We feel honorbound not to disclose names, although we have fully documented reports on each case.

Senator O'MAHONEY. May I suggest that in the interest of saving time, we will put all of these reports from your salesmen in the record so that you can skip to page 13.

However, let me give you an opportunity to state in general what these reports contain. I have been reading them over as we have been going along, and I note that your salesmen, as these quotations show, are telling you in every instance that the heater, your heater, cannot be sold.

Mr. SCHOFIELD. I concur with your request for brevity, so I will just dwell on the human drama a little bit, if I may.

Senator O'MAHONEY. Well, answer my question. Have I not summarized it?

Mr. SCHOFIELD. Yes.

Senator O'MAHONEY. All right.

(The reports referred to follow:)

"In February we sent 25 heaters to ———, a dealer in ———. Our heater was very well received by these people and all indications were that there would be more orders forthcoming.

"However, due to the existing new General Motors policy to Chevrolet dealers that no car will be shipped without a heater, these gentlemen still have on hand the original 25 heaters we shipped them in February. Every indication points to the one fact that they are unable to get cars without heaters from their zone manager."

From the same representative we find stated:

"There is a condition existing out on the field which I think should be brought to your attention. In my contact with the Chevrolet dealers in ———, I have met with considerable resistance from the dealer to purchase our heaters.

"In ———, ——— had ordered 75 automobiles for the month of January, 22 of which were ordered without heaters. ———, the manager of ———, told me, when I stopped to inquire about his ordering some heaters, that the entire order was sent back to him by the zone manager; and he was told that he would have to change the order to 75 cars to be shipped with heaters in them and that the entire order would be refused if ordered any other way."

In regard to another dealer the same salesman writes:

"I have just come from seeing the dealer in ———. After presenting myself and showing Mr. ——— our heater, he was very much impressed with the product but refused to order heaters from me because he said it was impossible for him as a small dealer to receive cars, or expect to receive cars, without heaters in them from the factory.

"This same dealer in the year 1954 bought several heaters other than those made by General Motors and he expressed the opinion that he would like to continue buying heaters from a firm like ours, but that there was no chance under the present setup.

"It appears to me that General Motors has in the last 30 days adopted a policy which is going to make our job of selling heaters extremely difficult. This was not indicated to me when I was out on the field in early December and through early January."

The following is contained in another sales report made at this time:

"I am submitting to you a report concerning the area ———. As I indicated to you earlier in the year and from our sales in this area in 1954, I expected to have an exceptionally good showing for our 1955 heater in this area.

"I call on an old account, ———, and presented our new program to them. All indications were that our sales would definitely be larger in 1955 than they were in 1954 in the ——— area.

"As of 13 days ago when I was last in ——— the situation has reversed to the point where the dealer, ———, expressed an opinion that it would be very difficult to get any cars without heaters from the factory. They told me that their new zone manager had told them that no cars would be moving out of his zone without heaters from the factory. They told me that such was the present situation and that if anything developed in the future they would let me know.

"From ——— I went to a small dealer in ——— and approached him on the possibility of using our heater. He has been a dealer for General Motors for 30 some years and probably moves only 200 cars a year or so.

"As I was talking to this gentleman, he told me that he had virtually no control over the accessories which were installed on a car in the factory and that if he were to try to install our heater in his cars he was afraid that General Motors would relinquish his franchise."

From still another State comes the following report:

"I have recently completed a swing through the State of ———. As you know from my last sales report for the State of ——— the outlook was very good for sales for our new 1955 heater. Since completing this trip, present indications are that selling to the dealer in ——— has become as difficult as selling to the dealer in ———.

"To cite you one instance, ——— was very enthusiastic about our heater when I contacted him in early January. As I stayed in ——— for 3 days, ——— asked me to call him back after he had been to a dealers meeting in ———. He had just told me that an order for 23 cars without heaters had been refused by their zone manager and that he had been forced to take recirculating heaters in those cars. The automobiles in question were going to an account in the southern part of the United States and no heaters were necessary for that section of the country; yet, he was forced to take those Chevrolets with the recirculating heaters on them.

"After my first contact with ———, he indicated that a change in policy might be possible and he would let me know after this meeting with the dealers. When I called ——— back at his request, he was very much upset and told me that it was very doubtful if he would be able to get any cars without heaters in the future."

From still another salesman comes this report of March 10:

"———, a very large Chevrolet dealer in this area, has advised us that he would like to subscribe to our program, but until such time that he feels that

purchasing our heater will not jeopardize their position with Chevrolet, they will not go along with us.

"You might like to know that this is the type of account that is very independent and do their own thinking. However, upon checking around with district men, etc., they decided it would be best for the present that they toe every inch of the line.

"This is too bad because we wanted ——— to lead the way for the other dealers in the ——— area.

"As you can observe by the drought of orders from ———, this situation is going to prevail until such time that the thinking in this district is relaxed with respect to preinstallation of heaters in Chevrolet automobiles."

And from another State comes this report:

"Referring to your question as to the reason for the complete state of inactivity in our No. 1 territory or the ——— area, permit me to state that the recent refusal of the various dealers in that area to subscribe to our program is and has not been for the reason that our arrangement is not satisfactory and profitable to them. The main obstacle seems to be the dealers' fear of the ——— zone district manager's opinion of their efforts to secure their heater requirements from a source other than the Chevrolet division of General Motors.

"I believe that a perfect example of this feeling prevails in the case of ———. This firm was one of the first dealers in the ——— area to order our No. 675 heaters. Upon receipt of these units, ——— called in to his district head and ordered 100 automobiles without heaters. He was then asked why he wanted the cars without heaters. He proceeded to advise them that he was going to use another heater other than the one that the Chevrolet division provides. He was very forthrightly informed that he would have to accept that order for 100 cars with the heaters with or installed in them from the factory. He was further advised to the effect that only on very special orders, such as a buyer going to Florida or some other warm climate after the car purchase, would they accept such orders minus the heaters equipped in the automobiles. In other words, the policy in the ——— area has and still is to make their dealers swallow everything that they can jam down the respective throats of their various dealers in that area.

"Of course you realize that where the larger dealers are forced to absorb that kind of pressure, it is only natural that the smaller Chevrolet outlets even fear the procedure to a greater extent. As a matter of fact we have encountered situations where smaller dealers could not wait for our salesmen to get out of their establishments."

On March 7 the following was reported from yet another State:

"The reason that ——— refused to accept the 50 No. 675 heaters is because when they originally purchased them they were under the impression that they could order their autos through with and without the equipment they desired. However, subsequently they were advised that the 1955 Chevrolet production procedure included the insertion of a heater in every car. And that on only special requests could they receive their cars without heaters.

"Of course you realize that this is nothing new. Generally, all the fellows that have intended to go along with us have had their wits scared out of them by the order takers representing some phase of the Chevrolet Motors operation."

And another report:

"The writer returned last week from a trip through the ——— territory. The results of this visit convinced me that we vastly underestimated the powers that be in the world of Chevrolet dealers. Permit me to state that it was somewhat discouraging to see those dealers that were looking forward to the E. L. Schofield program do a complete about-face and advise our ——— salesmen to the effect that while the situation is very competitive, they are still very appreciative of their dealerships, and for the present at least, they are afraid of even buying one heater from an outside source.

"——, as you know, our organization is highly dependent upon volume from the ——— area. Any relaxation of the flow of volume or anticipated volume from this area, makes our position quite grave to say the least. It is absolutely imperative that we maintain a constant volume from that territory. However, unless the dealers in that area are given a free hand to operate their enterprises as they see fit, there is no reason for the writer to maintain the expensive sales force that we have employed there at the present.

"The reaction to General Motors pressure tactics in ——— has been of a definite fear campaign to pressurize all car outlets in that city to subscribe to the entire Chevrolet accessories program to the fullest degree.

"Unless this situation clears itself up in ——— very shortly, it will be necessary for us to have someone from ——— come down to ———. The situation there has reached ridiculous proportions."

A further report:

"Upon thoroughly reviewing the entire matter, the writer has decided that if the situation with Chevrolet dealers does not break within the next 30 days, it will be impossible for us to continue our efforts in the capacity that we have during the past 4 months. It will be absolutely necessary for the writer to pare down on his ——— sales staff in order to make his operation economically feasible for the present time.

"While we realize that this action will weaken our ability to secure the proper volume that should be realized from our territory, I nevertheless, cannot continue to pay men to go and fight the General Motors Corp., especially when their Chevrolet division stacks the cards as they have recently."

Shortly after the first of the year a dealer in one State wrote:

"Our district manager ——— raised so much hell and I mean hell, that I had nothing else to do but ship them back. They install heaters as you know, so he told me to get four cars from you without heaters. So, knowing you couldn't give me the cars I had to ship them back. Sorry, but the factory really gave me the business, and I'm in no position to feud with them over \$40 that I could save on the heaters. Wish that I could figure out how to get cars from my district manager without heaters—use yours—make another \$10 and keep everyone happy."

On March 5 our salesman in the same State wrote us as follows:

"The following six Chevrolet dealers told (our representative) that they had trouble getting cars without heaters and they were afraid that they would probably not be able to buy heaters from us for that reason."

Mr. SCHOFIELD. These reports, although they are cold type on a mimeograph machine, they represent human drama, hardship, hard work, loss of income, in many cases hardship, if men have no other income except sales through their own effort, and if we can just visualize these incidents this morning not as a conflict between ideologies of one firm and another, but the fact that free enterprise in this country is becoming increasingly more difficult to practice—we ask no quarter from anybody. We accept the challenge to present our merchandise on its merits.

Senator O'MAHONEY. I suggest that you amend that statement and say that you ask no quarter from anybody in your class, your same size. You would not want a featherweight to fight Marciano, would you?

Mr. SCHOFIELD. No.

I would like to go on record though, if I may, saying that I have no conflict with bigness as such. I respect bigness. I think bigness has a place in our economy and life.

Senator O'MAHONEY. Let me ask you 1 or 2 other questions.

Mr. SCHOFIELD. Yes, sir.

Senator O'MAHONEY. What area have you served, generally speaking?

Mr. SCHOFIELD. We endeavor to serve large metropolitan areas such as Chicago, Philadelphia, Baltimore, the New York area; shall we say the Dallas area, the California Bay area, those areas where we could deal with large dealers.

Senator O'MAHONEY. Your business carried you into the principal cities of the country?

Mr. SCHOFIELD. Right.

Senator O'MAHONEY. From coast to coast?

Mr. SCHOFIELD. Right; correct.

Senator O'MAHONEY. I see.

Now, you have mentioned zone dealers or zone managers and regional managers.

In the second paragraph of your statement I find this sentence:

Upon investigation it was found that General Motors zone and district managers in certain metropolitan areas were refusing to approve orders for 1955 Chevrolet cars without factory-installed heaters.

Can you give us the zones and the districts which you have in mind?

MR. SCHOFIELD. By geographical location I think we will say Chicago—where the Ohio zone is centered—New England, St. Louis, Kansas City, Ohio.

Senator O'MAHONEY. Now, you have mentioned cities and then you mentioned the whole State of Ohio.

What is a zone and what is a district, as you understand it?

MR. SCHOFIELD. I have not been able to determine the boundary lines of General Motors zones, but we assume they take in trading areas as set up by General Motors for their own convenience.

Senator O'MAHONEY. Did you personally come in contact with any of these zone or district managers?

MR. SCHOFIELD. They are very hard men to see.

Senator O'MAHONEY. But did you get—

MR. SCHOFIELD. No, sir.

Senator O'MAHONEY. Who made the investigation to which you refer?

MR. SCHOFIELD. This is our salesmen's reports, Senator, that we have in the report year, in which they report that a certain dealer in a certain city told them that the district manager of that zone—

Senator O'MAHONEY. I wanted to make that clear. I thought that was it.

MR. SCHOFIELD. Yes.

Senator O'MAHONEY. But it had not been stated.

So that the refusal to approve orders for 1955 Chevrolet cars without the factory-installed heater was a refusal reported to you by your own dealer, your own salesmen, after consultation with dealer customers to whom you had previously sold cars?

MR. SCHOFIELD. Yes, sir.

Senator O'MAHONEY. Or sold heaters, I mean?

MR. SCHOFIELD. Yes, sir.

Senator O'MAHONEY. Thank you, sir.

MR. McHUGH. Mr. Schofield, do these dealers report the actual cancellation, the cancellation of orders actually entered into?

MR. SCHOFIELD. General Motors knows the law, and they would not be caught in such an act as actually canceling an order. These orders in every case that we were connected with were returned to the dealer on a personal basis with the suggestion that he rewrite the order to include the heaters. They would never send back a canceled order and say, "You have to take cars with heaters," because they know, their legal counsel, that that would be in violation of a ruling.

I sat in the office of a dealer in Dallas, Tex., who told me that he was constantly having to reorder cars with heaters, that he was refusing to accept a return of the orders, and that he was conducting a contest with the zone manager to see who would give in first; in other words, he would not take the order back, but he would issue a new order.

Being a large dealer, he knew he could move the cars later on in the year, and he would not cancel an order. He would simply issue a new order.

But the practice of the zone manager was not to send the order back with a letter or note saying, "We won't accept the order without heaters."

Senator O'MAHONEY. Who gave in in this contest or was it finished when you had your conversation?

Mr. SCHOFIELD. I think we, by perseverance, I think we gained some ground. I think we shipped some heaters in the Dallas area finally that I think went to this dealer. It was a contest to the finish where, as the calendar went on, these orders were laying there, and we admired the dealer for his perseverance and his stand.

Mr. McHUGH. Were your salesmen reporting that the car dealers were canceling the orders which they had placed with you to obtain a certain number of heaters with you?

Mr. SCHOFIELD. State that again.

Mr. McHUGH. Were your salesmen reporting to you that the car dealers, the General Motors car dealers, were canceling the orders which they had from you to purchase Schofield heaters?

Mr. SCHOFIELD. Yes.

We had received numerous orders that they requested to cancel, and that was the reason because they could not get cars without heaters.

Mr. McHUGH. Were your salesmen reporting that in some cases the car dealers were returning heaters to you which they were not able to sell?

Mr. SCHOFIELD. Yes. We had one dealer even threatened to sue us in New England because we could not set General Motors policy.

We had sold him heaters. We had delivered them, and he claimed we had told him that he could get cars without heaters, and he said he could not, and he sort of complimented us by saying that we should set General Motors policy.

He was then going to sue us for not having General Motors ship cars without heaters because we refused to take the return of the heaters.

Senator O'MAHONEY. You are on page 13 now, sir.

Mr. SCHOFIELD. Upon receiving this report from us on the heaters, Mr. Bridenstine, speaking for General Motors, stated that it is not General Motors policy to hold up or not accept orders for cars without heaters, and that if we would submit definite evidence of such practices, it would be examined immediately by the corporation.

Continuing to experience severe sales resistance because of the reported practice of General Motors to refuse to accept orders for cars without heaters, we sent, on April 15, 1955, identical telegrams to Alfred P. Sloan, Jr., chairman of the board, Harlow H. Curtice, president, and Henry M. Hogan, chief counsel, General Motors Corp., advising them of this situation and requesting written reply as to whether or not it is General Motors policy to require Chevrolet dealers to purchase and deal exclusively in General Motors accessories, and whether or not it is General Motors policy to equip all 1955 Chevrolets at the factory with General Motors heaters. The following reply was received from Mr. Hogan, April 26, 1955:

This will serve as an acknowledgment of your telegram of April 15, 1955, copies of which were sent to members of the board of directors of General Motors Corp.

It is not the policy of General Motors Corp. to require Chevrolet dealers to purchase and deal exclusively in any General Motors accessories or products including heaters.

Also, it is not the policy of the corporation to equip all 1955 Chevrolet passenger cars and trucks at the factory with General Motors heaters.

Each Chevrolet car is manufactured against a dealer's order. If a heater is specified, it is installed; if a heater is not specified, it is not installed. A dealer may order Chevrolet cars with or without heaters installed at the factory.

All of the foregoing has been well known, and, we believe, well understood by the public, our dealers, and our sales organization. In the course of regular surveys of our business operations and relationships, deviations from our normal course of dealing as set forth above have not been a problem. In addition, communications which we receive regularly from the public and our dealers have not indicated that the facts are otherwise than noted above.

Our investigation of practices in the areas mentioned by you, as a result of your telegram, does not reveal any basis for the charges presented by you. However, if you have any specific information and facts, relating to specific instances, we would appreciate receiving the same and we will investigate the matter further to determine the facts in each specific case.

I should point out, however, that Chevrolet motor division will continue to aggressively and honestly promote the sale of its heater which, in the opinion of Chevrolet engineers, is the best available for Chevrolet vehicles.

While it is extremely difficult to obtain the sort of information requested by Mr. Hogan due to dealers' fear of reprisal should their names be used, we were, nevertheless, able to furnish certain information which was relayed by our attorney's letter of May 19, 1955, to General Motors. In that letter our attorney informed General Motors that he had personally made calls with our Chicago representative on several of the largest Chevrolet dealers in the Chicago metropolitan area, and had found that while they were interested in using the Schofield heater, they had been unable to obtain 1955 Chevrolets without heaters. He then went on to say that:

*** The Schofield representative here in Chicago informed me that the General Motors zone manager, Mr. Messer, has refused to accept, from any of the dealers, orders for 1955 Chevrolets unless the orders specify factory-installed heaters.

According to your letter of April 25, 1955, to E. L. Schofield, each Chevrolet car is manufactured against the dealer's order and if a heater is specified it is installed but if a heater is not specified it is not installed. You also state in the same letter that "a dealer may order Chevrolet cars with or without heaters installed at the factory." This may be the announced policy, as noted in your letter, but if the General Motors representatives refuse to accept orders, as noted above, unless such orders specify factory-installed heaters, this announced policy becomes a nullity.

In the Kansas City and St. Louis areas, the Schofield representatives, having sold Schofield heaters to Chevrolet dealers, encounter the identical situation and report that the dealers cannot receive 1955 Chevrolets without heaters due to the action of R. B. Lyman and C. Chauvin, zone managers in those localities. We are not free to give you the names of these dealer accounts at this time, as it has been requested that they not be revealed.

In the Boston and New England district, Schofield has shipped numerous heaters to various Chevrolet dealers, some of whom are now holding these heaters or attempting to return them to Schofield claiming that they cannot obtain Chevrolets without factory-installed heaters. We are informed that this has been a result of action taken by Mr. Cornelius Glock, Chevrolet zone manager in that area. ***

After waiting a month for a reply, during which period two telegrams were sent to General Motors asking for a reply, we reported the situation to the Honorable Everett M. Dirksen, the Honorable Paul H. Douglas, and the Honorable Leo E. Allen, and asked for any help that they could give us.

Finally, after a further follow-up by our attorneys on June 28, we received the following letter from Mr. Hogan written June 23:

This will serve as acknowledgment of your undated 3-page letter, written during the month of May, outlining certain instances wherein Chevrolet dealers have apparently stated that they have been unable to obtain any 1955 Chevrolets without heaters.

Upon receipt of your letter, we requested Chevrolet Motor division to make an investigation of the charges outlined therein. Each member of the Chevrolet organization mentioned in your letter is thoroughly acquainted with the policy of General Motors Corp., as mentioned in our letter of April 25, 1955, to E. L. Schofield, Inc., a copy of which was sent to you. From the reports we have received, each of these Chevrolet representatives state that they have not and do not refuse to accept any order from a dealer for a Chevrolet passenger car without a factory-installed heater. By the same token, however, these representatives do aggressively sell the merits of the Chevrolet heater and the advantages to the dealers of having the heater installed at the factory.

I do not believe it is necessary to go into each of the specific instances mentioned in your letter, but our investigation indicates that where there has been a misunderstanding between a Chevrolet dealer and a Schofield sales representative, it appears to have resulted from some misrepresentation or misinformation last fall prior to the announcement of the new Chevrolet models when the Schofield representatives either implied or represented to Chevrolet dealers, at a time when heaters were in short supply, that the new Chevrolet cars would not have factory-installed heaters.

I do not make the above statement as any charge against any Schofield representative, but you should know that this seems to be the pattern of explanation on the part of the Chevrolet dealers mentioned in your letter.

In conclusion, I wish to advise that the trade practices outlined in your undated letter are not the trade practices of Chevrolet motor division. The practices of Chevrolet motor division are in line with the policy mentioned in our letter of April 25, 1955, to E. L. Schofield, Inc.

A copy of this letter was sent to Senator Dirksen, Senator Douglas, and Congressman Allen on July 7, supplementing our previous report of June 28, each of whom took the matter up with the Federal Trade Commission. As a result, representatives from both the Commission's Washington and Chicago offices met with us in Rockford on August 4. We were told by the Commission's representatives that it has been extremely difficult in the past to secure evidence to substantiate complaints similar to that which we were making. They said the Commission has been unable to get car dealers to witness against the companies issuing franchises; that it has likewise been unsuccessful in getting former car dealers to testify.

The day following that conference in Rockford, the Commission's representatives met with our attorneys in Chicago and also talked with a representative of our Chicago sales agency. We understand that the Commission's representatives also made calls on a number of Chevrolet dealers in the Chicago area that day.

In the light of its long study of General Motors, its acquaintance with the facts in this case, and the common public knowledge of pressures placed on car dealers, the report made by the Federal Trade Commission is indeed disappointing. Its report, as submitted to Senator Dirksen and Senator Douglas, together with our comments on each point, follows:

Your attention is invited to my letters of July 8, 1955, and July 26, 1955, in reply to your letters of June 27, 1955, and July 13, 1955, respectively, wherewith there were transmitted letters and other material from E. L. Schofield, Inc., of Rockford, Ill., a manufacturer of automotive car heaters. Contained therein were allegations by E. L. Schofield, Inc., to the effect that the Chevrolet division of General Motors Corp. is requiring its Chevrolet dealers to purchase Chevrolet

passenger-car heaters by refusing to accept orders for 1955 Chevrolets not equipped therewith. In your more recent letter of July 13, 1955, you asked to be kept advised of the progress of the investigation of this matter.

Please be advised that Commission representatives personally contacted E. L. Schofield, Inc., during the period August 3, 1955, through August 5, 1955, and interviewed its officers, sales representatives, and attorney, in an effort to obtain all evidence upon which Mr. Schofield's allegations are based. In addition, a Commission investigator contacted all companies, including authorized Chevrolet dealers in the Chicago metropolitan area listed in E. L. Schofield's letter of complaint, as reporting to it being unable to obtain 1955 Chevrolets without factory-installed heaters. The results of the investigation disclose the following:

1. All of the information upon which E. L. Schofield, Inc., based its allegations consists only of oral statements made by the dealers and others to either officials of E. L. Schofield, Inc., or its sales representatives.

Our officers and attorneys advised the Commission's representatives that they were not free at that time to release certain confidential material which had been furnished them in writing. They also advised the Commission's representatives that they would get nowhere in interviewing dealers unless the dealers testify under oath. Until this is done, the Commission will be relatively ineffective in complaints of this nature. Our attorneys reported to us that the Commission's representatives had expected to be given a fully documented brief, but were told by our attorneys that we could not make their investigation for them.

Mr. McHUGH. Mr. Schofield, what type of confidential material is it that you make reference to here?

Mr. SCHOFIELD. We have letters. Would you care to enlarge on that, Mr. Story? You have been keeping the file.

Mr. STORY. This goes back again to the dealers' fear of reprisal should their names be tied up with any reports of difficulties which they are having with the factory.

We regard all these dealers' accounts as our own good accounts and we must safeguard them.

We respect their confidence, and we would like to do further business with them.

Mr. McHUGH. Do you mean that you received letters from some of these car dealers in which they state they were not able to receive cars from the factory without heaters?

Mr. STORY. Not as much as that as reports including dealers named by salesmen. We do have a letter from one dealer.

Mr. McHUGH. You do have a letter from one dealer?

Mr. STORY. That is right.

Mr. McHUGH. What is the import, the effect, of that letter?

Mr. STORY. That letter is included in our earlier testimony we skipped over, that section which we did not read.

Mr. McHUGH. Did you refer the Federal Trade Commission to that dealer who was referred to in that letter?

Mr. STORY. No; they were not referred to that dealer.

Mr. McHUGH. Senator, may we call the witness' attention to this particular letter?

Senator O'MAHONEY. I wish you would; I was just turning back to find it.

Mr. McHUGH. Would you, Mr. Schofield, describe for us the letter in question that you received from the dealer?

Mr. SCHOFIELD. On page 12, the lower part of the page, "Our district manager"—

Senator O'MAHONEY. You say, "Shortly after the first of the year"——

Mr. SCHOFIELD. Shortly "after the first of the year"——

Senator O'MAHONEY. "In one State a dealer wrote"——

Mr. SCHOFIELD. Yes.

Senator O'MAHONEY. Now you can quote what he wrote.

Mr. SCHOFIELD (reading) :

Our district manager——

the name was given, I assume I can use the Biblical term here——

raised too much hell, and I mean hell, that I had nothing else to do——

Senator O'MAHONEY. The word is not unknown in these precincts. [Laughter.]

Mr. SCHOFIELD. I am uninitiated in the ways of hearings, and I did not know whether to use the word——

and I mean hell, that I had nothing else to do but ship them back. They install heaters, as you know, so he told me to get four cars from you——

that is, our Schofield salesman——

without heaters. So knowing that you couldn't give me the cars, I had to ship them back. Sorry, but the factory really gave me the business, and I am in no position to feud with them over \$40 that I could save on the heaters. Wish I could figure out how to get cars from my district manager without heaters, use yours, make another 10 bucks, and keep everyone happy.

Now, that is, we think, a pretty potent letter to come from a dealer; and I think you can understand why we feel we should not disclose his name at this time.

Senator O'MAHONEY. Do you have any dealer with you, I mean, any of your salesmen with you?

Mr. SCHOFIELD. We have Mr. Brown from Chicago.

Senator O'MAHONEY. Mr. Brown is to testify later?

Mr. BROWN. Yes, Senator.

Senator O'MAHONEY. Are you willing to testify under oath, Mr. Brown, as to the conversations you had with dealers without giving their names?

Mr. BROWN. Yes, sir; I am.

Senator O'MAHONEY. You are willing to testify under oath that the statements which have been attributed to salesmen whose names are not given here were of the same character as statements made to you concerning the forcing of heaters upon Chevrolet dealers?

Mr. BROWN. I do not believe I understand your question, Senator; I am sorry.

Senator O'MAHONEY. Well, the reports from salesmen that are given in this statement, the names of the salesmen are not given, don't you see.

Mr. BROWN. I am one of the salesmen. I would not know about others. I can only testify as to my own experiences.

Senator O'MAHONEY. Your own experiences. But you are willing to testify under oath with respect to your own experiences?

Mr. BROWN. Yes, sir; I am.

Senator O'MAHONEY. And you tell me now that your experience in the reports you have received from Chevrolet dealers is similar to the reports covered here by other salesmen?

Mr. BROWN. We did not duplicate, however; mine are entirely separate.

Senator O'MAHONEY. I understand.

Mr. SCHOFIELD. If you will turn now to page 16, item 2, on page 16, further continuing with the Federal Trade Commission report, under item 2, they reported that each dealer contacted in the Chicago area denied ever having made any such representations, and each affirmatively stated that 1955 Chevrolet automobiles are available and can be ordered by the dealer without a factory-installed heater if such is the desire of the dealer. A spot check of the dealers' car orders revealed that most were accompanied with an order for factory-installed heaters.

Senator O'MAHONEY. Inasmuch, Mr. Schofield, as this material seems to apply to the facts already alleged by you, and the material is cumulative, are you willing that it be printed in the record as your testimony without being specifically read, since I have read most of it already? So that we may go on with Mr. Brown and get his sworn testimony as to the material factors which are what was told to him by certain Chevrolet dealers of pressure applied upon them. Is that satisfactory to you, Mr. McHugh?

Mr. McHUGH. Fine, Senator. I have just a few brief questions going on the general—

Senator O'MAHONEY. I do not want to shut off any questions that counsel may have.

Mr. McHUGH. Mr. Schofield, are there any other independent manufacturers who are making this custom Chevrolet heater?

Mr. SCHOFIELD. To our knowledge, there are two other manufacturers that are producing a heater that will be called custom for the Chevrolet car.

Mr. McHUGH. Would you give us the names of those?

Mr. SCHOFIELD. One is E. A. Laboratories of Brooklyn, N. Y., and the other is the Hadees Corp. of Rockford, Ill.

Mr. McHUGH. Do you have any idea of how large the sales of either of these companies are to Chevrolet dealers?

Mr. SCHOFIELD. We have no knowledge of their sales figures. From contacts which we have in the field through our sales representatives, we know they are having the same difficulties that we are having, but we have no access to their sales figures.

Mr. McHUGH. Could you tell us what percentage of the Chevrolet cars use the so-called Harrison heater?

Mr. SCHOFIELD. I would say that of Chevrolet cars equipped with heaters in 1955, it would be apparent that it would run a strong between 95 to 99 percent on the cars that have Chevrolet-manufactured heaters.

Mr. McHUGH. I have nothing further, Senator, with him.

Senator O'MAHONEY. Are you willing now to proceed with Mr. Brown?

Mr. McHUGH. Yes.

Senator O'MAHONEY. Mr. Brown, let me say to you that in asking you if you are willing to take an oath as to the testimony you are about to give, I want to inform you that a perjury case could not be made out against a witness who takes an oath before a committee of Congress with only one member of the committee present.

Therefore, if I administer the oath to you, I being the only member of the committee present at the moment, it would not be a valid basis for a perjury case against you.

I ask you, therefore, if you are willing to waive that rule and take the oath from me, sitting alone?

Mr. BROWN. Senator, I would like to ask why is it necessary for me to take an oath? I do not believe that Mr. Schofield did so.

Senator O'MAHONEY. Yes, but he did not make the individual contacts.

What we are faced with here from the testimony of Mr. Schofield is the fact that your company has made representations to the General Motors Corp. that the Federal Trade Commission cease-and-desist order was being violated, that dealers were being pressured against their will to accept General Motors heaters in their cars; that the cars, the Chevrolet cars, were not delivered without heaters, that many of the dealers told your salesmen that the orders which they have given for Chevrolets without heaters were returned to them and, therefore, they could not continue to buy your heaters, and jeopardize their business for General Motors.

This material was all laid before the general counsel for General Motors, vice president and general counsel, Henry M. Hogan, and Mr. Schofield has just put into the record the response of Mr. Hogan in which he denied that there was any pressure and asserted that if there was any appearance of a refusal to take orders without heaters, it was due to a misunderstanding, and probably due to misrepresentation on the part of Schofield salesmen that the cars for 1955 were to be delivered without heaters.

Now, that is the summary of the case.

You are a salesman, the only one here, and since the committee is faced with this complete collision of testimony, you and Mr. Schofield, telling us that dealers have told you repeatedly that they could not get these orders without heaters, and that General Motors, in its communications to you, had denied that fact, I am asking you if you wish to say under oath, with the waiver of which I have spoken, so that your testimony will therefore not be subject to invalidation?

Mr. BROWN. I will do so and accept the waiver.

Senator O'MAHONEY. At this point there will be inserted in the record the balance of Mr. Schofield's statement.

(The statement referred to follows:)

This statement fails to name specific dealers who were interviewed, nor does it identify the parties with whom the Commission's representatives talked. Furthermore, it gives no information as to the interviewing technique employed.

The Chevrolet division of General Motors offers both a fresh air and a recirculating heater for its passenger cars. It is logical to assume that a dealer can order cars equipped with one or the other heater, or without a factory-installed heater. Dealers have told us, however, that in actual practice: Orders for cars without heaters have been returned to dealers with instructions to change the order to specify that heaters are included; prompt delivery will be promised of cars with heaters, while there will be delays in delivering cars without heaters; and that only a portion of the number of cars ordered without heaters would be delivered without heaters.

"3. Each dealer reported that it bought some Schofield heaters in the latter part of the 1954 model year as there was a general shortage of heaters at that time. No shortage has developed during the current model year."

The specific accounts to which the Commission refers are again not stated. Shortages of General Motors Chevrolet heaters did develop in October 1954 and continued for a number of weeks, accounting for a portion of our business.

However, no reasonably prudent manufacturer would design, tool, and manufacture a product as complicated as a custom heater for an ephemeral shortage market.

We know that many dealers would buy Schofield heaters if permitted to do so by their zone and district managers. This is clearly illustrated in the report of sales to certain accounts in Chicago, Boston-Providence, Philadelphia, and Baltimore, during 1954 and 1955, as set forth on the attached table. It will be noticed that substantial sales were made in Boston-Providence and Chicago markets prior to the shortage which developed in the fall of 1954, and that, with the exception of one Chicago dealer who went out of business, each dealer placed his order, usually in a substantial amount, for our heater for the 1955 Chevrolet.

However, in general they refused to accept delivery of the heaters, or else delayed paying for them, or else requested that we accept the return of the units.

In contrast, our sales in Philadelphia and Baltimore have maintained a consistently high volume of sales throughout the year.

It is evident that the fragmentary report of the Federal Trade Commission does not accurately analyze the situation. Dealers in Philadelphia and Baltimore have at least some freedom to buy heaters where they wish, and they do prefer to buy the Schofield heater. Dealers in Boston-Providence and Chicago purchased Schofield heaters prior to the 1954 shortage, and as a mark of their acceptance of the Schofield 1954 heater, placed substantial orders for Schofield's 1955 heaters. None reordered as they could not get cars without factory-installed heaters.

"4. The factory did not install any heaters on the 1954 Chevrolet models, and all Chevrolet heaters sold during that period necessitated installation by the dealer. Each dealer reported that it prefers heaters to be factory-installed, as is now available, as (1) it eliminates the necessity for any inventory of heaters, (2) it enables a more economic use of mechanics and other maintenance men, eliminating their use in installation of heaters, and (3) it eliminates space problems as cars are ready for immediate delivery upon receipt thereof."

These statements, attributed uniformly to each dealer interviewed by the Commission's representatives, bear careful review. First, factory-installed heaters do not eliminate the necessity for any inventory of heaters. If every car comes equipped with a heater, the dealer actually has a greater inventory of heaters than he would have if he secured them from his supplier independent of the car. Therefore more, rather than less, of his capital is tied up in heater inventory.

Furthermore, this policy applies only to cars, and as trucks are delivered from the factory without heaters, it is assumed that the dealer must still maintain a stock to take care of those of his truck customers who want a heater installed.

Considering the second statement, we must realize that dealers have service departments in order to make money. There is no reason why a dealer should not be able to profit as much from the installation of heaters as from any other work done in his service department—unless General Motors has taken away his traditional profit by reducing the suggested installation charge on heaters to a point where he can no longer profit by doing the work. As a matter of fact, a dealer should be able to profit substantially from the installation of a Schofield heater because a Schofield heater can be installed in a small fraction of the time required to install the General Motors heater. Dealers know this and it is but one of the reasons why they prefer to buy the Schofield heater.

The reference to cars being ready for immediate delivery on receipt by the dealer is inaccurate. Cars require considerable servicing on their arrival from the factory before they are ready for delivery. This is recognized by the car factories in allowances made to cover the cost of this work. Purchases of Schofield heaters this year by dealers in Philadelphia and Baltimore, where Chevrolet dealers can get cars without factory-installed heaters, bear out that this is not a problem.

"5. Each dealer stated that the Chevrolet-Harrison heater was superior to competing heaters and that while the competing heaters were of a slightly lower cost, the price differential was not sufficient incentive to overcome the advantages of a factory-installed heater as noted above."

Again, we are not clear what the Commission means when it refers to "each dealer." We also assume that reference is made to the Schofield heater, although that is obscure. The comparison of the Chevrolet original-equipment heater and the Schofield heater made earlier in this report refutes this statement.

Recent figures have given national average net profit of car dealers as 6 per cent. Applying this percentage on a sale of \$2,500, the average dealer would have a profit of \$15. A dealer can purchase the Schofield fresh-air heater for approximately \$20 less than its General Motors counterpart cost him when installed in the car. His mechanic can easily install the heater in less than 1 hour. If the heater is sold for the same list price as General Motors suggests for its heater, the dealer can realize a net profit in excess of \$15 on the heater alone.

Here, again, purchases of Schofield heaters by dealers in Baltimore and Philadelphia, where dealers can secure Chevrolet cars without factory-installed heaters, indicate that the Commission's statement is incorrect.

"6. Each dealer expressed the opinion that it was improper to install a competing heater in Chevrolet automobiles without disclosure thereof, as customers expected the Chevrolet-Harrison heater to be installed in Chevrolet passenger cars. It was the opinion of some dealers that both the general public and its fleet accounts much prefer a Chevrolet-Harrison heater as compared to products manufactured by companies other than Chevrolet."

Car dealers have sold the products of independent manufacturers for many years either because they are better, or they cost less. It was not improper to offer the Schofield heater in Chicago in 1954 and, as is in the case in Philadelphia and Baltimore, it would not be improper to offer the Schofield heater in 1955, if only the dealers had been able to get their cars delivered in 1955 without factory-installed heaters.

We assume reference is made to the Schofield heater in the second sentence, although again the Commission's report is not clear. Suffice it to say, however, that neither the general public nor fleet accounts can exercise their preference if they do not have a choice of products.

The Commission's report concludes as follows:

"Pleased be advised that the above summary is made to acquaint you with some of the problems the Commission encounters in attempting to establish a violation of this order. Our investigation has failed to reveal any correspondence, factory bulletin, or other communication from Chevrolet Division of General Motors Corp. to its dealers indicating that Chevrolet is forcing its heaters upon Chevrolet dealers in violation of the Commission's order. Until such time as the Commission can substantiate the charges of E. L. Schofield, Inc., either through documentary material or corroborative statements of a cooperative dealer, the allegations of E. L. Schofield, Inc., will be of little value in any consideration of a civil-penalty proceeding.

"The above information pertains only to the Schofield complaint and does not relate to the recent investigation of General Motors' compliance with the order pertaining to its distribution of all automotive parts, accessories, and supplies, currently under review."

A careful investigation of our complaint would not have depended upon finding correspondence, factory bulletins, or other communications from General Motors to its dealers through which it could be deduced that General Motors is forcing its heaters on Chevrolet dealers.

The evidence indicates that this policy is set at the district or zone level. The fact, also, that the Commission has failed to secure testimony from a "cooperative" dealer should not be interpreted as refutation of the situation as it has been reported.

The Commission's agents have themselves told us that, over the years since the cease and desist order was issued, the Commission has yet to run across a dealer who would so testify.

We have spent considerable time and money in an effort to remedy this situation for our dealer accounts and ourselves. However, despite abundant evidence, our reports both to General Motors and the Federal Trade Commission have been fruitless.

Having neither time nor resources for litigation, does this mean that we must watch our business rapidly crumble?

It is our conviction that this need not be the outcome if steps are taken to restore the individual car dealer to his rightful independent position. Despite all the good reasons which are advanced for exclusive franchises, it is our opinion that exclusive franchises destroy the dealer's autonomy and make him a vassal of the car manufacturer.

Senator O'MAHONEY. Mr. Brown, do you solemnly swear that the testimony you are about to give in this proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BROWN. I do.

Senator O'MAHONEY. Thank you, Mr. Brown.

Mr. McHugh, will you question Mr. Brown?

**TESTIMONY OF W. W. BROWN, SALES REPRESENTATIVE,
E. L. SCHOFIELD, INC.**

Mr. McHUGH. Do you have some notes or statements that you would like to use, Mr. Brown, in refreshing your recollection concerning these cases?

Mr. BROWN. Yes; I do.

Mr. McHUGH. Will you just describe generally what these types of cases are?

Mr. BROWN. Well, these are individual case histories of my contacts, in contacting dealers in the Chicago area in an attempt to sell them heaters; and, boiled down very briefly, as to actually what happened.

There is no attempt which has been made on 2 sheets to relate all the experiences, and I have selected only 17 cases, but that can be duplicated many times over.

Mr. McHUGH. You refer to these only by case number for the purpose of concealing the names of the dealers?

Mr. BROWN. That is right.

Mr. McHUGH. Would you read what you have to say with reference to what you describe as case No. 1?

Mr. BROWN. Case No. 1. Subject company purchased heaters during the 1954 season. Considerable interest expressed in heaters for 1955 cars. Several sales contacts made with this firm during the 1955 season, but no sales were made because subject company was unable to purchase cars without heaters from General Motors Corp.

Mr. McHUGH. Did you personally talk with someone in the Chevrolet dealer organization that is referred to here?

Mr. BROWN. Yes; I did.

Mr. McHUGH. Would that be the manager or someone in charge of this dealer organization?

Mr. BROWN. In this particular case it was the sales manager, the service manager, and the parts manager.

Mr. McHUGH. In this particular case, had the Chevrolet dealer accepted an order from you to purchase any Schofield heaters?

Mr. BROWN. Not for 1955.

Mr. McHUGH. They had bought some for 1954?

Mr. BROWN. Yes, sir; they had.

Mr. McHUGH. And had they been successful in installing those heaters they bought from you in 1954?

Mr. BROWN. Yes; they had. I personally was there in 1954 and watched installation, and a mechanic remarked to me that it was as easy or easier than their regular heater they had been accustomed to install.

Mr. McHUGH. Will you report for this committee what the substance, as reported to you, was of the conversation between the Chev-

rolet dealer, sales manager, and the General Motors official with whom they talked?

Mr. BROWN. I don't know to whom they talked. All I can tell you in all honesty is that he confidently expected to be able to do business with me and buy heaters from me; and during the course of our contacts it later developed that he was unable to get cars without heaters and, consequently, bought no heaters from me.

Mr. McHUGH. Well, did he state that he had ever actually placed any orders?

Mr. BROWN. He didn't place any orders, because he would have placed them with me or mailed them in to the company, and I would have known about them.

Mr. McHUGH. He did not report to you who it was in the General Motors organization who reported to him?

Mr. BROWN. No, this man did not; no.

Mr. McHUGH. Will you—

Senator O'MAHONEY. Let me interrupt, Mr. McHugh. I am not altogether clear on whether the witness understood your question or whether I did not.

Did you intend to ask Mr. Brown whether this particular dealer had placed orders for Chevrolets without heaters?

Mr. McHUGH. Yes.

Senator O'MAHONEY. I do not think he understood that to be the question.

Mr. BROWN. I cannot tell you whether he did or not.

Mr. McHUGH. You state here that no sales were made because the subject company was unable to purchase cars without heaters from General Motors.

Mr. BROWN. Yes. I know this man would have been very happy to have purchased heaters, Schofield heaters, from me if he had been able to buy cars without heaters.

Senator O'MAHONEY. Did he tell you that?

Mr. BROWN. In the beginning he was very free with what he told me. The last contact I had with him he, shall we say, clammed up.

Senator O'MAHONEY. Well, in the first contact, what did he say?

Mr. BROWN. He gave me every assurance that we would do business with each other in 1955.

Mr. McHUGH. How do you know he was unable to purchase cars without heaters from the General Motors Corp.?

Mr. BROWN. Let's say I have not any specific proof of that.

Mr. McHUGH. Well, did he state to you that he was unable to purchase cars from the General Motors Corp. without heaters?

Mr. BROWN. I cannot remember the exact words that he used, but I assumed that he probably did make some such statement.

Mr. McHUGH. But it was something he did or said whereby he created the impression in your mind that he could not obtain cars from the General Motors Corp. without heaters?

Mr. BROWN. He certainly did.

Senator O'MAHONEY. Had he previously purchased heaters from you?

Mr. BROWN. Yes; this company had purchased 1954 heaters from me.

Senator O'MAHONEY. How many?

Mr. BROWN. He had purchased 1954 heaters.

Senator O'MAHONEY. 1954.

Was he a good customer?

Mr. BROWN. In the limited time we had to do business together, he was; yes.

Senator O'MAHONEY. And there was a harmonious relationship between you?

Mr. BROWN. Definitely so.

Senator O'MAHONEY. Did he at any time in the beginning of the conversations indicate to you that he was not going to continue to be a purchaser?

Mr. BROWN. During the sale of 1954 heaters?

Senator O'MAHONEY. Yes.

Mr. BROWN. No; he did not.

Senator O'MAHONEY. Did you at any time represent to him that 1955 Chevrolets would be made without heaters? Was that question raised in your discussion?

Mr. BROWN. I, to the best of my recollection, don't believe that it was with this particular individual.

Senator O'MAHONEY. All right, Mr. McHugh.

Mr. McHUGH. Would you describe what the situation is with reference to case No. 2.

Mr. BROWN. All right.

This company placed many orders and used large numbers of Schofield heaters during 1954 season. Statement was made that they would use approximately 1,500 Schofield heaters during 1955 season.

Senator O'MAHONEY. By whom was the statement made?

Mr. BROWN. I believe the gentleman that made this statement is a partner in the firm. Actually, I know the man's name.

Senator O'MAHONEY. I do not want to ask about that, but he was the executive with authority to make such a statement, was he?

Mr. BROWN. Yes; because he is the man who purchased heaters from me previously, so certainly it had every appearance to be in authority in there.

Mr. McHUGH. You state here they said they would use approximately 1,500 Schofield heaters. Did they tell you they intended to buy 1,500 heaters from you?

Mr. BROWN. He gave me that—I understand that he intended to do that; yes.

Mr. McHUGH. Can you tell us what the unit price was that you were selling a Schofield heater to this particular dealer for?

Mr. BROWN. In the quantities in which he was going to buy them, it would have run \$31.85, f. o. b. Rockford.

Mr. McHUGH. Someone purchasing in these quantities, would he be a fleet operator?

Mr. BROWN. Well, this particular individual was a combination fleet man and dealer.

Mr. McHUGH. Do you know what the unit price of these heaters would be if he purchased them directly from General Motors Corp.?

Mr. BROWN. Well, as Mr. Schofield has pointed out, it is rather hard for us to arrive at a definite figure. There are figures that enter into that that we cannot definitely apply to one particular heater but, to the best of my knowledge, he would have to pay approximately \$46.

Mr. McHUGH. You state here that you made various sales contacts with this dealer during 1955.

Mr. BROWN. Well, I practically camped on his doorstep; 1,500 heaters meant a lot of money to me.

Mr. McHUGH. These are sales contacts with this dealer which you made personally?

Mr. BROWN. Yes, sir.

Mr. McHUGH. Would you report to us what the substance of his replies to you was when you asked him whether or not they were going to buy your heaters?

Mr. BROWN. Well, he gave me every indication of the fact they were going to buy heaters from me, and in my presence in his office made calls to some representative of General Motors in an attempt to get permission to buy cars without heaters, and was refused.

Now, I don't know who he talked to. All I know is what I heard him say.

Senator O'MAHONEY. In your presence he conferred——

Mr. BROWN. Yes. I cant' tell you verbatim what he said; it would be impossible.

Senator O'MAHONEY. I would not expect that, but do you know he was talking to a General Motors official?

Mr. BROWN. Let's say he was talking to whoever he would have to talk to in order to get permission——

Senator O'MAHONEY. Well, I mean, do you know he was talking to General Motors?

Mr. BROWN. No, I don't. I cant' imagine who else it would be. Obviously, he would not be talking to someone he was not going to get the O. K. from.

Senator O'MAHONEY. What did he say that gave you the idea he was asking for permission?

Mr. BROWN. Well, it would be something like this, "I would like to place an order for 100 cars without heaters, and I would like to have them delivered at such-and-such a day," and permisison was refused.

Senator O'MAHONEY. Well, did he tell you that permission was refused?

Mr. BROWN. I don't remember exactly what he did say. He tried to get them and he couldn't do it.

Senator O'MAHONEY. How do you know he could not; that is what I am trying to get at?

Mr. BROWN. Because I didn't get the order.

Senator O'MAHONEY. Because you did not get the order?

Mr. BROWN. That is right; the best answer I can give you.

This man previously, he had bought hundreds and hundreds of heaters from me, and certainly every indication pointed to the fact he was going to continue to purchase hundreds and hundreds of heaters from me.

Senator O'MAHONEY. Well, you know the picture you give me, Mr. Brown, is during the time you were in this man's office, this friendly customer of yours, and you asked him to buy some of these heaters that he had indicated previously he would buy——

Mr. BROWN. Purchase.

Senator O'MAHONEY (continuing). And he sort of shakes his head and picks up the telephone and he talks with someone.

Mr. BROWN. Right.

Senator O'MAHONEY. And he says, "I would like to buy a hundred cars without heaters."

Then, does he just hang up the phone and say, "No, I cannot buy?"

Mr. BROWN. One specific call that I remember, there was quite a bit of conversation back and forth, but he seemed to lose.

Senator O'MAHONEY. He seemed to lose?

Mr. BROWN. He lost; he hung up.

Senator O'MAHONEY. Then did he say anything to you?

Mr. BROWN. Well, I hadn't given up then; I still thought I would sell them, and kept going back, and eventually they just didn't buy any.

Mr. McHUGH. Directly after finishing his telephone conversation, Mr. Brown, did he then tell you that he would not be able to buy your heaters?

Mr. BROWN. I can't remember exactly what he said. I would assume that what he said was, "Well, we can't get them now, let's try it again a little later on."

He gave me some hope or I would not have continued to go back there.

Senator O'MAHONEY. But one thing is certain, that in your presence he did call somebody and asked that somebody——

Mr. BROWN. Yes, sir.

Senator O'MAHONEY (continuing). Permission to buy cars.

Mr. BROWN. Yes.

Senator O'MAHONEY. And you have assumed it was a General Motors official?

Mr. BROWN. That is the only assumption I can make.

Senator O'MAHONEY. Yes.

Your relations with the man were such that in your opinion he would not have gone through this form of a telephone conversation with anybody but a General Motors superior?

Mr. BROWN. I can't believe this particular individual would do so.

Mr. McHUGH. Did he make this a long-distance call or was this a call to someone in the same town?

Mr. BROWN. No, sir; it was a local call.

Mr. McHUGH. Did he indicate to you before he made the call that he was going to call an official?

Mr. BROWN. No; he didn't tell me. At the time I thought I was getting an order, and then he was on the phone.

Mr. McHUGH. You stated you made a subsequent followup with this same man?

Mr. BROWN. Many, many times.

Mr. McHUGH. Did he make any other telephone call or have any telephone conversation in any other subsequent visits you made with him?

Mr. BROWN. Well, this particular individual was on the phone so many times, he was a very, very busy man, I would say, so that probably every time I called on him he made 12 or 15 calls.

Mr. McHUGH. Do you have reason to believe any subsequent times you visited with him that he was calling General Motors Corp. with respect to your particular problem?

Mr. BROWN. I don't believe I can testify that he distinctly made another such call. It is possible he may have.

Mr. McHUGH. What is the general effect of the conversations which you had with him on the subsequent visits?

Mr. BROWN. Well, he gradually became less and less warm as a prospect, and toward the last few contacts I made with him, gave me the opinion that it probably wasn't worth while for him to try to buy heaters from me because the savings were not worth while. It was very convenient to have them installed at the factory, and so on and so on.

Mr. McHUGH. Did he ever tell you that yours was not a satisfactory heater?

Mr. BROWN. To the best of my recollection, this man did not.

Senator O'MAHONEY. But he did say it was convenient to have them installed at the factory?

Mr. BROWN. Yes; he did.

Senator O'MAHONEY. Is that how you knew that he was getting cars without heaters?

Mr. BROWN. I beg your pardon, Senator?

Senator O'MAHONEY. Is that how you knew he was getting cars without heaters or with heater—I beg your pardon, with installed heaters?

Mr. BROWN. Well, that could be one of the ways; but in this particular individual in this case, I personally went through a lot where he had received lots of new cars, and I just couldn't believe they were all coming in with heaters, and I had to satisfy myself as to that, and I have never yet looked at a car that didn't already have a heater installed in it.

Senator O'MAHONEY. You did personally examine cars——

Mr. BROWN. Yes, I did; I couldn't believe it.

Senator O'MAHONEY (continuing). On this company's lot?

Mr. BROWN. Yes; I did.

Senator O'MAHONEY. And you found them all installed with heaters?

Mr. BROWN. Yes; I did.

Senator O'MAHONEY. They were 1955 cars?

Mr. BROWN. They were.

Mr. McHUGH. Mr. Brown, when you made your first contact with this salesman at the time he indicated an interest in the Schofield heaters——

Mr. BROWN. This is not a salesman.

Mr. McHUGH. A sales manager.

Mr. BROWN. I think he is a partner, to the best of my ability.

Mr. McHUGH. At this time when he was interested in buying a Schofield heater, did he indicate then that it was a very important sales problem to him, the question of whether or not it was installed at the factory?

Mr. BROWN. No; I don't think that he did.

Mr. McHUGH. He was not much concerned about that at that time?

Mr. BROWN. I don't believe so.

Mr. McHUGH. Mr. Brown, did you have any occasion to contact any of these car dealers in the presence of Mr. Amidon of the subcommittee staff?

Mr. BROWN. Yes I did.

Mr. McHUGH. Will you tell us the details of any of those occurrences.

Mr. BROWN. All right.

Senator O'MAHONEY. Are any of these cases on the mimeographed statement?

Mr. BROWN. Yes, there are some. It was not written up with that in mind; I mean, they were just picked indiscriminately. Some are and some are not.

Senator O'MAHONEY. I understand; I just learned this by chance, and I want to bring this out.

Mr. BROWN. I see.

In the first place, before we made my contacts, Mr. Amidon told me to introduce him to the men that we talked to and give his full official status so that we would not be misrepresenting him as a friend of mine or whoever it might be.

One call that we made, in fact the first one, this dealer had purchased heaters from us which he had not installed, I assume, because he was unable to get cars without heaters.

When we met him he told us his relationship with General Motors was very satisfactory. He preferred to have the factory install heaters, and Mr. Amidon then asked him a question which was rather pertinent: "If you prefer the factory to install heaters, why did you buy any Schofield heaters?"

And this gentleman was unable to make a satisfactory explanation to that question.

That briefly sums up that contact.

Another contact that I recall, we walked in, the man with whom I had been dealing was in the process of getting, I believe, a dealership for himself, and he was not available, so we went to see the parts man whom I had contacted previously, and before I was able to introduce Mr. Amidon—this is not verbatim now, but to the best of my recollection—he says, "Hey, Brown, what in the devil am I going to do with those 13 heaters that I have left over from the first order we gave you? I can't eat them."

Well, at that time I completed introducing Mr. Amidon, and this gentleman, as I recall it, his face turned red, and he said, "Well, I haven't another word to say. You will have to see the boss for any more information."

We went down and talked to the boss. First we talked to the son of the owner, and he seemed to take our visit very kindly and did not offer any particular information that would be of value here. I think he was afraid of reprisals, reprisal action by his dad in this case, and then his father came in. We talked to him, and very peculiarly he took a file from his desk, and in that file took out 13 cards which were orders they had attempted to place for 13 cars without heaters, and, if my memory serves me correctly, they were going to get 5 of those cars without heaters, and would still be stuck for 8 heaters that—

Senator O'MAHONEY. Did he take out these cards from the file himself?

Mr. BROWN. Yes; he did.

Senator O'MAHONEY. Did he describe them to you?

Mr. BROWN. Well, I saw them. They are typical cards of approximately this size.

Senator O'MAHONEY. How could you tell they were orders for cars without heaters?

Mr. BROWN. He stated that himself.

Senator O'MAHONEY. He said to you——

Mr. BROWN. Yes.

Senator O'MAHONEY (continuing). In the presence of Mr. Amidon——

Mr. BROWN. Yes; he did.

Senator O'MAHONEY (continuing). That these were orders for Chevrolet cars without heaters?

Mr. BROWN. Right.

Senator O'MAHONEY. Then what did he say?

Mr. BROWN. Well, as far as he knew, he would get the cars, the 5 cars, in without heaters and would still have to take 8 of the 13 with heaters.

Senator O'MAHONEY. Did he tell you that?

Mr. BROWN. To the best of my recollection he did.

Mr. AMIDON. That is what the orders showed.

Senator O'MAHONEY. I will have to put you under oath. Do not volunteer testimony. This is a very important situation.

Mr. BROWN. Now, I have a couple of other contracts I would like to make, also made in the presence of Mr. Amidon.

We went to see another dealer. This dealer had previously purchased rather large quantities of Schofield heaters that were used in the 1954 model, and had made the statement to me before Mr. Amidon went out there with me, that they would be in a position to use approximately 15,000 heaters from us, on 1955 cars, and had given me an order to begin with for a hundred heaters.

Now, later they increased that to 109, and we made, if I remember correctly, a delivery of 9 right away, we happened to have some in the office.

Later on they canceled the order for a hundred—I believe that those had left the factory, and I think they were in Chicago at that time, if memory serves me—they had not left the factory but were about to leave the factory—and the reason that those were canceled is because we could not get them to accept an order without specifying that they would get cars without including the General Motors heater.

Senator O'MAHONEY. Did he give you that reason?

Mr. BROWN. Yes; he did. I have been in this man's office many times when he called, and this time I am sure it was a General Motors representative, and he tried to get permission to buy cars without heaters and was not successful.

Senator O'MAHONEY. What makes you sure?

Mr. BROWN. Because he told me he was going to call a particular individual.

Senator O'MAHONEY. Did he name the individual?

Mr. BROWN. As I recall it, he did not name the individual. He used his title, and in this case I believe the title was zone manager.

Senator O'MAHONEY. In other words, you are testifying to the committee that he told you that he was going to call the zone manager?

Mr. BROWN. Yes, sir.

Senator O'MAHONEY. And in your presence he did it?

Mr. BROWN. To the best of my knowledge, that is to whom he talked.

Senator O'MAHONEY. Was Mr.——

Mr. BROWN. No; this is—I am presenting what happened with this account before Mr. Amidon got there and also while we were there.

This man received both of us very favorably and gave us quite a bit of off-the-record testimony, and the reason—statements—and the reason he wanted to be off the record is because, in turn, he was planning to have an agency of his own, and he made the statement that he didn't want any reprisal action to be taken. That was made in front of Mr. Amidon and myself.

Senator O'MAHONEY. Well, inasmuch as we are not using his name, I am not asking you to identify him nor to identify the company that he represents. I think that I can ask you to state whether or not this off-the-record conversation he had with you was in relation to the pressure or the alleged pressure being applied upon his company by General Motors to take cars with heaters when he wanted cars without heaters.

Mr. BROWN. I think that had some bearing on it, Senator. I don't believe—he did mention pressure and he mentioned the fact that he wanted to have a smaller agency so that he wouldn't have so much pressure.

I think actually the application of cars with or without heaters was a minor annoyance to him actually. I think there were many other things that entered into it. I am not in position to say what all of his conversations were; I don't know. But this man, I am sure, would like——

Senator O'MAHONEY. What was the type of the off-the-record conversation?

Mr. BROWN. It is a good question. I wish I had a good answer. I have not a satisfactory answer to that.

Senator O'MAHONEY. What impression did it convey to you?

Mr. BROWN. Well, I can't answer that either.

Senator O'MAHONEY. O. K. Anything else, Mr. McHugh?

Mr. McHUGH. Mr. Brown, did you have occasion to contact any fleet operator——

Mr. BROWN. Yes.

Mr. McHUGH (continuing). In Mr. Amidon's presence?

Mr. BROWN. Yes. This is another case I would like to call to your attention. In this case the man is unusual in the respect that he did give us verbal authority to use his name if we wished. I don't know whether I should do that or not.

Senator O'MAHONEY. Well, I am not going to ask you to do it because it has been my policy in conducting this hearing not to use the name of any person who is involved in this business without personal contact with the person and the agreement of that person, either by me or by general counsel or an authorized member of the staff. So I will not ask you to do it. But, without giving his name, please tell us what he said.

Mr. BROWN. Well, he said that he would be in a position to use three to four hundred cars yearly without heaters and would like to buy them that way, and he tried many, many times, and again this

particular gentleman in my presence did make telephone calls to, I believe—this man is a car-rental man, and I believe that he made calls to car dealers in an attempt to get them to place orders for many cars, cars without heaters, and he told Mr. Amidon and myself that he would like very much to buy cars without heaters, but was unable to do so.

Senator O'MAHONEY. And these cars were Chevrolet cars?

Mr. BROWN. Yes, they were.

Senator O'MAHONEY. Mr. Amidon, will you be sworn?

TESTIMONY OF ROBERT H. AMIDON, ATTORNEY, ANTITRUST SUBCOMMITTEE, UNITED STATES SENATE

Mr. AMIDON. Yes, sir.

Senator O'MAHONEY. You solemnly swear the testimony you are about to give in this proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. AMIDON. I do, sir.

Senator O'MAHONEY. Give your full name, please.

Mr. AMIDON. Robert H. Amidon; I am an attorney on the staff of this committee.

Senator O'MAHONEY. Did you visit automobile dealers in company with Mr. Brown?

Mr. AMIDON. Yes, sir.

Senator O'MAHONEY. Tell us whether or not you confirm the statements made by Mr. Brown of the conversations which he has related with certain dealers unnamed in your presence?

Mr. AMIDON. Yes, sir. His statements are substantially correct.

I might add with regard to this fleet operator that he gave me permission to use his name in my official capacity as a staff representative of this committee, so should you decide his name should be put in, it can be because permission has already been obtained from him.

With regard to this one situation that Mr. Brown described on the parts manager, after indicating that he was going to have to eat these heaters because he had not been able to get cars without heaters, I asked him this question, I asked him, "Have you been trying for some time to get cars without heaters?" And at that time he said, "I can't say another word. You will have to talk to the manager."

I think it is significant because of the fact that it was in October and car dealers were stocking practically no 1955 cars at all any more, they were waiting for the new models to come out; I think it was significant that he had 13 heaters upstairs, that there was an order which the owner's son testified for 13 cars downstairs, the same number of cars being ordered at this late date, 1955 models, as they had Schofield heaters upstairs, and even at this late date the record shows—

Senator O'MAHONEY. You mean that downstairs there were how many cars?

Mr. AMIDON. There were 1 or 2 cars on their showroom floor, but they had just recently put in orders for 13 1955 cars.

Senator O'MAHONEY. With or without heaters?

Mr. AMIDON. They had requested them without heaters, according to what the owner's son told me. He chalked off each car and said he

had requested it without a heater, and then he took out some invoices which, I imagine, were records——

Senator O'MAHONEY. Never mind what you imagine.

Mr. AMIDON. I don't know. I didn't personally examine his records; and on checking them he pointed out that 5 of the cars would have heaters, and that the other 8 would not have heaters.

Senator O'MAHONEY. He told you that of the cars ordered 5 would have heaters and 8 would not have heaters?

Mr. AMIDON. Yes, sir.

Senator O'MAHONEY. Well, doesn't that indicate that he was getting cars without heaters?

Mr. AMIDON. Yes, sir; that is right.

Senator O'MAHONEY. What about the Schofield heaters upstairs?

Mr. AMIDON. Well, it seemed to me that it was significant, as I said, that they were ordering 13 cars without heaters downstairs at this late date, and there were 13 Schofield heaters upstairs, and that the parts manager had indicated that they had trouble getting cars, and despite this, when his father, who was the owner, came in, he said that everything is lovely with Chevrolet. He said, "We can get cars any way we want them. If we want cars without heaters, we can get them that way."

Senator O'MAHONEY. And you were imagining that they were going to put the 13 Schofield heaters into the 13 cars that were ordered?

Mr. AMIDON. Yes.

Senator O'MAHONEY. But only eight would be received without heaters?

Mr. AMIDON. That is right.

I was wondering in my mind, having a little knowledge of business, as to why they would be wanting to continue carrying 1955 Schofield heaters in stock upstairs, in view of the fact that they said they could get cars without heaters. You would think they would want to move them, not hold them.

Senator O'MAHONEY. Of course, that is argumentative, Mr. Amidon, as you know.

Mr. AMIDON. That is right.

Then this one other dealer that we talked to, who indicated that he was interested in buying a large number of Schofield heaters, also told us that he had on many occasions put in orders for cars without heaters, and was unable to get them. His partner had just died, and he was in the process of trying to sell out this Chevrolet agency and buy himself a smaller one, and that was the reason which he advanced for not giving me permission to use his name. Again in every instance, I asked the man if we could use his name; he said, "I would like to, but if I let you use my name, I know it would be hopeless to get another Chevrolet dealership and it is a pretty good business."

Senator O'MAHONEY. Was this a conversation in the presence of Mr. Brown?

Mr. AMIDON. Yes, sir; it was.

Senator O'MAHONEY. Very well.

Any more questions, Mr. McHugh?

Mr. McHUGH. Unless the Senator thinks it is necessary, I would not see any reason to go into much of the details of these other cases because, in substance, they are the same type of complaint. You might want to have this statement of Mr. Brown's in the record.

Senator O'MAHONEY. I think the statement may be included in the record.

(The document referred to reads, in full, as follows:)

Individual case histories of contacts made with General Motors Corp. dealers by William W. Brown will be submitted by individual case numbers. Name of the company, address, and individuals contacted, will be furnished committee members upon request by referring to the case number assigned:

Case No. 1: Subject company-purchased heaters during the 1954 season. Considerable interest expressed in heaters for 1955 cars. Several sales contacts made with this firm during the 1955 season, but no sales were made because subject company was unable to purchase cars without heaters from General Motors Corp.

Case No. 2: This company placed many orders and used large numbers of Schofield heaters during 1954 season. Statement was made that they would use approximately 1,500 Schofield heaters during 1955 season. Many sales contacts were made with this firm during the 1955 season, but no sales were made due to their inability to get cars without heaters.

Case No. 3: Subject company used Schofield 1954 heaters. No heaters were purchased for 1955 cars as they were unable to receive cars in the Chicago area without heaters already installed at the factory.

Case No. 4: Subject company purchased Schofield heaters in rather large volume during the 1954 season. This company bought a quantity of Schofield heaters early in the 1955 season, but were unable to have General Motors Corp. ship them cars without heaters and later returned most of these heaters to Schofield.

Case No. 5: This company promised during the latter part of the 1954 season to buy the 1955 Schofield heater. After several unsuccessful attempts to place orders for General Motors cars to be delivered without heaters they failed to give any orders for the 1955 Schofield heaters.

Case No. 6: Subject company purchased 1954 Schofield heaters. Statements were made that they expected to purchase up to 15,000 Schofield heaters during the 1955 season. First purchase order placed for over 100 Schofield 1955 heaters was later canceled as they were unable to have General Motors cars delivered in the Chicago area without heaters being installed at the factory. The company attempted again and again to secure approval from the General Motors Corp. zone manager for cars to be shipped to the Chicago area without heaters. This permission was never obtained.

Case No. 7: Numerous attempts were made by this company to have General Motors cars delivered to them in Chicago without heaters without success.

Case No. 8: Subject company used Schofield 1954 heaters. Statement was made that they would purchase approximately 400 Schofield heaters per month during the 1955 season. And shortly after the first of the year they placed their initial order with Schofield. However, they have been unsuccessful in securing cars without heaters in any volume, and therefore have been unable to purchase heaters from us.

Case No. 9: This company used Schofield 1954 heaters. Statement was made that they would use approximately 50 Schofield heaters per month during the 1955 season; 25 Schofield 1955 heaters were shipped to this company in February 1955. Several attempts were made to secure General Motors cars without heaters during the balance of the 1955 season. During the end of the 1955 season a few General Motors cars were scheduled for delivery without heaters to enable this customer to use up most of his stock of Schofield heaters.

Case No. 10: Subject company purchased 1954 Schofield heaters. After several unsuccessful attempts to purchase General Motors cars without heaters it was impossible to sell them the 1955 Schofield heaters.

Case No. 11: Subject company purchased 1954 Schofield heaters. Several unsuccessful attempts were made during the 1955 season to purchase General Motors cars without heaters.

Case No. 12: Considerable interest was expressed by this firm in the 1955 Schofield heater. As they were unable to secure cars from General Motors Corp. without heaters no orders were placed for the Schofield 1955 heater.

Case No. 13: Subject company purchased 12 Schofield 1955 heaters. No more orders for these heaters were placed as the company was unable to purchase cars from General Motors Corp. without having heaters installed at the factory.

Case No. 14: This company purchased 10 Schofield 1955 heaters early in the 1955 season. No further orders were placed due to the difficulties experienced

when trying to place orders with General Motors Corp. for cars to be delivered without heaters.

Case No. 15: Subject company purchased 10 Schofield 1955 heaters early in the season. No additional orders were received as subject company was unable to purchase cars from General Motors Corp. without heaters already installed at the factory.

Case No. 16: This company purchased a few 1954 Schofield heaters. They were advised that General Motors Corp. would make all heater installations at the factory in 1955 and they did not buy any Schofield heaters during 1955.

Case No. 17: Subject company tried several times to purchase General Motors Corp. 1955 cars without heaters. As these attempts were all unsuccessful no orders for Schofield 1955 heaters were placed.

Due to the policy of the General Motors Corp. as indicated in the above case histories, it was impossible to sell Schofield heaters during the 1955 season with the exception of only a few scattered sales at the beginning of the season. As a result of this policy our earnings for 1955 were seriously affected.

Senator O'MAHONEY. Very well.

Mr. McHUGH. If that is so, we have no other questions.

Senator O'MAHONEY. Thank you very much, Mr. Brown.

Mr. BROWN. Thank you, sir.

Senator O'MAHONEY. How about this other gentleman, Mr. Story, is he to testify?

Mr. McHUGH. No.

Senator O'MAHONEY. You were a standby?

Mr. STORY. That is right, sir.

Mr. McHUGH. He answered a few questions.

Senator O'MAHONEY. Was his name given to the reporter?

Mr. STORY. Yes.

(Discussion off the record.)

Senator O'MAHONEY. Let me say, Mr. Amidon, after the recess I would like to have you give Mr. Burns and myself the name of this fleet dealer who told you that he would be willing to have his name used.

Mr. AMIDON. Yes, sir.

Senator O'MAHONEY. In order that we may look into the advisability of calling him as a witness.

Mr. AMIDON. Yes, sir.

Senator O'MAHONEY. The committee will stand in recess until 1:45.

(Whereupon, at 12:20 p. m., a recess was taken, to reconvene at 1:45 p. m. of the same day.)

AFTERNOON SESSION

Senator O'MAHONEY. Will you proceed?

Mr. McHUGH. Will you state your name, please.

STATEMENT OF JOHN W. DUKE, GENERAL MANAGER, AUTO SUPPLY CO., INC., ACCOMPANIED BY HAROLD T. HALFPENNY, COUNSEL, NATIONAL STANDARD PARTS ASSOCIATION

Mr. DUKE. My name is John W. Duke.

Mr. McHUGH. Do you have a prepared statement with you, Mr. Duke?

Mr. DUKE. I do.

Mr. McHUGH. Does this statement set forth your background and experience in this industry?

Mr. DUKE. It does.

Mr. McHUGH. Do you wish to make some statements from that?

Mr. DUKE. I would like to file my complete statement on this with the committee.

My name is John W. Duke. I am general manager of Auto Supply Co., Inc., of Nashville, Tenn. My company has been in business since 1927. We now have 48 employees and the year ending last June 30 we did gross business of slightly more than \$1,100,000. We have no branch stores, and I am told we are the largest automotive wholesaler in our area.

Mr. McHUGH. Mr. Duke, do you handle a general line of automotive parts?

Mr. DUKE. We do, sir.

As I come before you gentlemen, I feel that I am committing suicide. I am of the opinion that I will face reprisals from the division of General Motors with which my company does business, and the AC spark plug division. Then too, when I return I must face the wrath of many friends who are stockholders in this corporation.

Mr. McHUGH. Mr. Duke, I wonder if you would explain for the record just what the AC spark plug division is.

Mr. DUKE. What the division is?

Mr. McHUGH. Yes.

Mr. DUKE. Well, they manufacture spark plugs, oil filters, fuel pumps, speedometer chains, gas, oil, and radiator caps, and the guide lamp.

Mr. McHUGH. That, then, is a manufacturing division of the General Motors Corp.

Mr. DUKE. It is.

Mr. McHUGH. And you as a wholesaler handle their line?

Mr. DUKE. We do.

I cannot hope to gain friends among the car dealers and I stand to lose some. I will not be welcomed in the company of those who champion free enterprise, nor those who feel that this inquiry is nothing but a political witch hunt.

This raises the question of why I should be here before you this morning when I stand to lose a lot and at this moment the advantages are purely speculative.

First, let me say that I am president of the Nashville Automotive Wholesalers, a group of automotive jobbers in Nashville, Tenn. I am also a member of the legislative committee of the Automotive Wholesalers of Tennessee.

In this instance this statement was presented to our board of directors Monday morning, calling a special meeting, and it bears their approval.

This group represents the interests of some two hundred-odd wholesalers in our State and as a member of the National Standard Parts Association I must put aside any personal loss and the loss to my company in the hope of making a contribution to your study of our industry in particular and the giant car manufacturers with special emphasis on the General Motors Corp.

Some 2 years ago I first communicated with the Department of Justice, the Federal Trade Commission, the Department of Labor, and our Senator Kefauver. At that time I expressed the belief, and I have not changed it, that GM's present plan of parts distribution was

in violation of a cease-and-desist order issued back in 1941. I also stated I felt that certain practices they were engaging in were monopolistic and not in the best interest and welfare of the public. I also feel that the wholesale distribution of automotive parts in interstate commerce is covered by the Fair Labor Standards Act notwithstanding that administration bulletins have specifically exempted the car and truck dealers and in so doing have placed a financial burden on the wholesale parts jobber.

If it is agreeable I would like to comment further regarding the three subjects that I have mentioned.

I will take up GM's parts distribution program first. This was introduced at the beginning of 1954. Frankly, I believe the program basically unsound. I have hopes that it will enjoy a very short life. However, its span of life is dependent on three factors: The view that Congress and the FTC will take on the subject, and the economy of our country. If we should ever return to a 4 million car-truck output—and I think that the way the dealers are overselling their market we may see this sooner than many would like for it to happen—the car and truck dealers of GM as a dealer group will put sufficient pressure on GM to return the parts business to their dealers.

Let's review the rapid rise GM has made in its desire to monopolize the parts aftermarket. We will have to go back to 1940 as a normal prewar year. During that period they had exclusive sales contracts and protected territories for their dealers.

Mr. McHUGH. Mr. Duke, I wonder if you would explain what you mean by this 4 million car-truck output return.

Mr. DUKE. In 1950 we had about a 6½ million car market. I understand in October that the industry passed the 6 million market.

Senator O'MAHONEY. You mean October this year?

Mr. DUKE. Yes. I say that they are overselling the market in this respect. They are extending terms of 36 months to pay, and in doing so it takes about 18 months with a normal downpayment which they are getting before the customer has any equity in his car that he can go in and use that car to trade back in. Sooner or later everybody that can afford a car has got one, and those that buy on time haven't got any equity in it. I am not here to debate the fact that they are overextending, that is their business, and if they dig their own hole, why, they will have to fall in it.

Senator O'MAHONEY. You really mean that they are overproducing as well as overselling?

Mr. DUKE. That is true, but the pressure is on the dealer by the car manufacturer to take the cars and then do something with them. Then they have gone ahead and done what in my opinion is bad business.

When you sell a man something and you have to see that he stays in good health and makes his payments every month just to stay even, he is not acquiring any equity.

Mr. McHUGH. Mr. Duke, I wonder if you would explain for this subcommittee just how the General Motors wholesale parts distribution program affects you as an individual wholesaler?

Mr. DUKE. I would like to refer to the back sheet as appendix A and use as an example the next to the last item, 429-AC fuel pump with the manufacturer's part number, to the left. This shows a manufacturer's suggested list price of five and a quarter.

That is what you as a motorist would pay for this pump if you bought it from the Chevrolet dealer, what you would pay for it if you bought it from a garage, what you would pay for it if you bought it from a service station. In the second column is a car dealer price or what we as a wholesaler would charge the car dealer for it, what we would charge a service station or the repair shop for it.

In the next column is what the dealer pays for that from General Motors, the same identical price.

However, if a dealer should sell that part for resale, that is, for someone just going to resell it such as a garage or service station, General Motors rebates him 68 cents. That is shown in the next column which under the circumstances would make the dealers on the pump that sold for resale \$2.

Senator O'MAHONEY. What is your authority for saying that is a rebate?

Mr. DUKE. I have seen the dealers' price sheets, and in the far right-hand column is in code the 68-cent rebate that he gets. Now to save on accounting the parts clerk that bills this out to John Jones Garage, one 429 AC fuel pump at \$5.25, net \$2.68 and on the other copy of that he puts over here 68 cents. That is the amount that he is entitled to as credit from GM, and he turns that copy in for an audit to get his refund from General Motors.

Senator O'MAHONEY. How do you know this?

Mr. DUKE. I have seen this rebate where it says, "Functional discount on printed parts price lists" of the Chevrolet dealer.

Mr. McHUGH. Do you mean a rebate or just an additional discount which is allowed?

Mr. DUKE. You can call it a functional discount or a rebate or a performance discount, whatever you want to. Anyway they get a credit for 68 cents when they report the sale for resale.

Senator O'MAHONEY. But the amount of the rebate, if I understand your testimony, is passed on to the consumer?

Mr. DUKE. No, sir, you are wrong. That winds up as being the dealer's profit because he sold that fuel pump at his cost.

Senator O'MAHONEY. You have misunderstood my question.

Mr. DUKE. I am sorry.

Senator O'MAHONEY. I think your attorney will explain it.

Mr. DUKE. Read that question back.

(The question was read.)

Mr. DUKE. No, sir, it is not.

Senator O'MAHONEY. Let me read from your prepared manuscript on page 7:

If the dealer buys his requirements from GM, GM suggests that the dealer sell this value at their cost and GM will give a rebate.

Do you mean the dealer's cost or GM's cost?

Mr. DUKE. No; the dealer's cost.

Senator O'MAHONEY. All right. Then the dealer sells the valve at the dealer's cost.

Mr. DUKE. That's right.

Senator O'MAHONEY. And GM will give a rebate on such sales of 12 cents?

Mr. DUKE. That's right.

Senator O'MAHONEY. Does the cost, when the bill is rendered to the consumer, include the 12 cents or not?

Mr. DUKE. To the consumer it has not changed from the \$1.05 on the valve.

Senator O'MAHONEY. What is the price to the consumer?

Mr. DUKE. \$1.05.

Senator O'MAHONEY. And the cost from General Motors to the dealer is 53 cents?

Mr. DUKE. That's right.

Senator O'MAHONEY. That is the actual cost?

Mr. DUKE. That is his cost.

Senator O'MAHONEY. Is the 12 cents deducted from that?

Mr. DUKE. If he reports it sold for resale.

Senator O'MAHONEY. If he reports it sold?

Mr. DUKE. If he reports it sold for resale from invoices that he picked it off of his sales, they rebate him a functional rebate for having made that wholesale transaction at his cost.

Mr. HALFPENNY. Senator, that is rebate for resale to other resellers. It is not to the consumer.

Senator O'MAHONEY. It is not to the consumer?

Mr. HALFPENNY. No; it is not. It is to other resellers, a garage owner or some other person that would ordinarily buy from a wholesaler.

Mr. DUKE. We need not go into the others which would be a repetition of the same price and rebate structure.

Mr. McHUGH. Mr. Duke, I wonder for the purpose of the record now if you will explain to us what is the effect upon your business of this pricing structure which you have just described here.

Mr. DUKE. Well, I think a good example of that is this: We will take a Pontiac dealer in Nashville that has been an account of ours. I bought a car from them; in fact, I bought two cars from them—my brother bought one—and when it comes to selling spark plugs he can buy the AC spark plugs with his regular monthly stock order from GM or he can buy them from us, and he gives us that business.

With prices being equal, the accessibility and the quick source of supply for slow-moving parts, we considered him an outlet for our various items.

Now, when they introduced this parts program here, he tells me he can't buy any more from them and he sits down and we go into it in detail. If I knew who I was going to sell that spark plug to that I buy from you, I might give you a part of it. If I knew I was going to sell it to another list-price customer, I am not damaged, and I can give you that business, but since I don't know and it is speculative to whom I am going to sell it if I buy it from you, I am swapping dollars when I sell it for resale. But if I buy it from GM and sell it for resale, I make 9 cents.

Mr. McHUGH. So what you are saying is that if he buys this product now under the wholesale parts distribution plan from General Motors, he acquires it, if he is buying it for resale, he buys it at exactly the same price as you as an independent wholesaler are able to buy that commodity?

Mr. DUKE. If he bought it for resale, that's right.

Mr. McHUGH. So the net effect of that is there would be no reason why now the car dealer would want to obtain such goods from you because it would mean simply swapping dollars, as you say.

Mr. DUKE. That's right. Now that is an example where I feel like they have used an economic squeeze to coerce the dealer to trade with General Motors.

Mr. McHUGH. Is that what you mean when you say this practice you believe may violate the Federal Trade Commission's cease-and-desist order?

Mr. DUKE. That's right.

Mr. McHUGH. Would you care to amplify your remarks any more as to why you think this may actually be a violation of that order?

Mr. DUKE. The dealer is not free to make a decision as to whether he wants to buy from this jobber, that jobber, or GM without suffering a speculative penalty not knowing where he is going to buy it from.

Mr. McHUGH. Is there anything about the wholesale parts plan which would prevent the car dealer from imposing what you describe as an economic penalty upon him, from going out and obtaining goods from independent manufacturers not made by the General Motors Corp. or not sponsored by the General Motors Corp.?

Mr. DUKE. When you say "made," there are so many parts that they don't make. We almost have to go back and see whether they buy from General Motors or buy from someone else.

Now when General Motors made up their minds to get back into the replacement business—and I think I should read the background of that because that is pretty important. We will have to go back to 1940, a normal prewar year. No; I can pass that up.

Their parts depot salesmen called on their dealers and under a threat of contract cancellation they were able to write the lion's share of the dealers' parts needs. I was a parts salesman myself during that period and I heard many car dealers tell me that the GM salesmen just didn't approve of them buying so-called "gyp" parts even though they were identical with those manufactured by the same manufacturer that supplied GM.

But—and this is important—it was not a "genuine General Motors part." The car dealer bought the parts from GM at what we called the 40-percent discount level, and we, too, as a jobber sold or offered to sell a like and often identical part at the same discount.

The car dealer sold the parts, usually at list to the motoring public, and to a garage, service station or another car dealer at a discount of 25 percent. The jobbers, such as my concern, bought such parts from their supplier at a discount of 55 to 60 percent from the same list price.

I will discuss in a moment the same list-price subject. The jobber in turn sold in competition to the car dealer at discounts of 30 to 40 percent extreme.

Then a brilliant mind at GM came up with the idea that they extend to their dealers, and their dealers extend to their reseller accounts such as garages, the same discount on competitive parts as they do with captive parts. By captive parts I means such items as steering wheels, fenders, and body parts that are not available from any other source other than the particular car manufacturer. It was like bidding

against themselves. They corrected this by reducing the discount and resale at both the dealer and garage level on captive parts but increasing slightly the discount on competitive parts.

To keep from getting the two types of parts confused, I am going to call a fender a captive part and a valve a competitive part. After this price adjustment the garages received a discount of 10 to 15 percent on the fender they bought and 25 to 40 percent on the valves depending on the generosity of the car dealer.

This was the discount structure in effect when the war came on. As you may recall, GM closed down their car production and they and many of their suppliers went into defense work.

Before the Office of Defense Transportation got on top of its job, no one thought of keeping transportation going. There were many parts shortages, and junked cars that might have been a source of supply in keeping cars going were being forced into the steel mills.

However, thanks to the many thousands of independent parts manufacturers who had been supplying the car factories, they kept their parts manufacturing going on limited scales as materials were allocated and these parts were available to the thousands of parts wholesalers, such as my company, throughout the country. During this period the car-truck dealers were our best customers. These car dealers found themselves installing replacement parts of identical quality and often the identical part but under the name of Zollmer, Permite, Toledo, Perfect Circle, Sealed Power, Thompson, McQuay-Norris, Borg-Warner, to name but just a few.

Even the most skeptical car owner who had always been led to believe that anything but a genuine part was of inferior quality saw that this unknown part did its job and the prestige of the so-called genuine parts had lost its identity.

Motorists, fleet operators, garages now knew at first hand, often from the car-truck dealers themselves, that many, many parts that are or had been referred to as "genuine parts" were falsely labeled as such, but were and are the product of independent manufacturers who supplied such parts both to the car manufacturer and the independent wholesaler.

I cannot keep from calling this to your attention. It is something I cannot understand that our Government, through the proper agency, has permitted the deception to continue year after year. This misnomer and false advertising has been to the detriment of independent wholesalers for years.

Now, the war is over, GM's defense contracts are reduced and they return to the manufacturing of cars and trucks for the hungry public. But something is missing. No longer will the motoring public, garages, or repair shops pay a premium just to get a valve packaged in a GM box. They must again start from the bottom in retelling their story that only "genuine parts" fit properly, give the performance, and that their warranty is void if they do not use GM genuine parts.

As an American citizen I am grateful for the genius, know-how, and the facilities that GM lent to the war effort. As an independent wholesaler I would not want to enjoy the advantage they lost in the parts aftermarket.

Such advantage no longer exists and we wholesalers find ourselves not only having to surrender a share of the aftermarket parts business

but are struggling against competition that we think unfair for our very existence.

I believe GM, in its organization, has brilliant men who have made a careful study of all their markets. Here is what they found. This is my speculation. The independent wholesaler has access to all the parts they now purchase or a duplicate thereof.

The wholesaler has acquired an exceptional knowledge of parts for all makes of cars and trucks; he has trained mechanics, the parts are carried in stock and are readily available and attractively priced.

He furnishes obsolescence protection, delivery service, credit accommodations, and his salesmen are helpful with vital information and by regular calls keep the repair shops, fleets, and others well posted and stocks complete.

Mr. McHUGH. Mr. Duke, are you saying the wholesaler acquired this know-how and you got into this field as a result of the war period when General Motors was occupied on other—

Mr. DUKE. No, no. We in a way took over their market because they were in the war effort. During that time the General Motors dealers would buy parts from us under our own supplies' private names, Borg-Warner, Thompson, McKay, Norris, Perfect Circle, all of those were a part of that, and they found out, and it isn't hard to do, that they were identical and sometimes the same part.

You take Zolner pistons, you know how the trade-mark goes this way, that is on the original castings of the pistons that we sell. It's just been smacked there with a grinder to attempt to eliminate it, but it is the same identical part.

Now, GM, to get into the market, has got to do something. They came out and busted the resale price to the bottom, and there are three or four examples in here, where, when they get ready to go into a market, the first thing they do is to crush it. Looking at wrestlers, you see one that looks like a big brute and he knocks the other man down, but then he gains respect. He is a giant. Some of my remarks bring that out, that they have broken the market and dare you to go under it, and you can't go under it. They have taken all the sap out of it, all the profit angle out of it.

Mr. McHUGH. Would you care to describe some of these examples where you say GM has crushed the market?

Mr. DUKE. I think as good an example as I can give is on the guide lamp, which is on page 10, beginning with the second paragraph.

Picking up on page 6, the suppliers of these wholesalers follow GM's list prices as their suppliers know better than to print a list below any car manufacturer. Other manufacturers in competition of such suppliers likewise follow the same list prices. GM, to capture the aftermarket, must offer as attractive a discount, they must continue to plug the "genuine parts" gimmick to the unsuspecting public until the proper Government agency slaps their wrist. They are in a position to demand of their suppliers an acquisition cost that will protect their profits and satisfy their stockholders.

Under the threat of manufacturing the article themselves, or establish a list and net price that no independent manufacturer can compete with, they can channel all the profit of manufacturing into their pockets. While taxes are high, they can gain any advantage they want and knock any competition out of the ring with the Government with

taxes contributing the greater share of the costs. They must not overlook the independent wholesaler; maybe it would be wise to get some of them on their side. Why not use the theory of divide and conquer? Some of these observations are my own, and others are from facts, to which I am prepared to testify.

At the end of 1953, GM announced first to its dealers that they make half the cars and trucks in use, and that they have developed and own the rights to supply the replacement demands for the aftermarket.

To be sure of the dealers' cooperation and under the rule of following the spirit of the Robinson-Patman Act, where all purchasers at each level must be sold at the same price, they introduced to their dealers their parts distribution program. They tell them that under a FTC cease-and-desist order they cannot compel the dealer to buy only from them, but they will be financially punished if they don't.

Here is how their plan works, as explained to me by a local GM dealer. A Chevrolet valve lists for \$1.05, his cost from GM will be 53 cents. They will make 100 percent profit on all they sell at list price to the motoring public. At the present time the local wholesalers have the same suggested list. Their garage price was 63 cents and they sell to the dealer for 53 cents but bear in mind that the wholesaler pays 41 cents. If the dealer buys his requirements from GM, GM suggests that the dealer sell this valve at their cost and GM will give a rebate on such sales of 12 cents. However, if the dealer buys from the wholesaler and follows GM's resale schedule to the garage, they will be swapping dollars. In an appendix to my statement, I have listed in tabular form a number of other examples.

I ask you, is that coercion? Has not GM accomplished through an economic penalty just what the cease order of 1941 forbids them to do?

Now, to make the package more attractive, they promised continuing advertising of the "genuine parts" and reminded dealers that they could stay open 24 hours, 7 days a week, and need not worry about the 40-hour week or time and one-half that the independent wholesalers is burdened with—the car dealer is considered a service establishment. Sales to fleets, States, counties, and business establishments to the ultimate consumer are looked upon as retail sales.

This is the attitude of the Department of Labor, notwithstanding a case in our local Federal court, *Walling Administrator v. Stillman*. The judge in this case ruled that such sales, even though to the ultimate consumer, were nonretail in character and insisted such sales were not grounds for exemption under the retail sales percentage formula.

Many dealers were not quick to grab this program. They felt it was not fair that they should be expected to carry many thousands of dollars in inventory, whereas a shade-tree mechanic, without any appreciable investment, could purchase a part at the same price that they paid for it when they work on the same customer's car.

GM did not insist that their dealers follow this program. If the dealers were not inclined to sell at their suggested garage prices to the garage trade in competition with the independent wholesaler, they would make no objections and would still give them the rebate provided they reported a sale of such a part for resale. What was wrong with this nice gesture was that with a price disadvantage they would not realize the ambitions of GM and capture the aftermarket business.

However, in the end they made it unattractive to the dealers not to follow their pricing formula. They accomplished this by going directly to the independent wholesaler and selecting some that were interested in riding the "genuine parts" bandwagon. They made these wholesalers GM parts jobbers. I know of no attempt at price collusion among the GM parts jobbers and the car dealers, and without such and the parts jobber following the discount structure, the dealers, one by one, have fallen in line.

I have no quarrel with the wholesaler who went into the GM program. I would not be interested in it for, at best, it would only be attractive until the dealer organizations insisted that it be stopped. GM protected itself by reserving the right to repurchase the stock, cancel it under certain conditions, not make the franchise transferable and withdrawable at their bidding.

So much for GM's parts program and its bid for the aftermarket. Time will tell whether I am correct in my belief that they are and have been in violation of the FTC cease-and-desist order. Time will also tell whether it is possible for a corporation of the size of GM to make false claims and misrepresentation in their advertising year after year. No agency has lent an ear to those grieved by such a practice.

My belief that GM is engaged in monopolistic practices that are not in the best interests of the public is the result of my observations and study of its effect on the independent automotive wholesaler.

To single out GM by itself is unfair. It could well apply with slight modifications to Ford, Chrysler, and International Harvester, and probably to a lesser degree to American Motors, Studebaker-Packard, and White-Mack Truck. In this group of less than 10 is concentrated 95 percent or better of the entire transportation manufacturing industry. GM only magnifies the condition because of its size.

Since our study is restricted to GM, I will make no further reference to the others.

I would like to make this observation here: The bigger a business, the bigger its responsibilities to the welfare of the public, the greater are its opportunities to engage in monopolistic practices. A concern the size of GM can use a \$10 million war chest and with our present tax structure the Government would contribute indirectly the larger part of such a sum. GM could, at its will, knock out, as competitors, one by one, any segment of the industry which supplies it or the other car manufacturers. This could not be done collectively, but by taking them one by one—the piston manufacturers, the pin manufacturers, the bearing manufacturers, the piston-ring manufacturers, et cetera.

Let me give you an example. In Cornersville, Ind., is the plant of Stant Manufacturing Co., which supplies or has in the past been a major supplier of oil, radiator, and gas caps to car manufacturers and the aftermarket through the independent wholesalers. GM's AC division decided to add duplicate products to their line. When they introduced their line of caps to the wholesalers, GM immediately reduced comparable prices from 8 to 15 percent. They established comparable lower lists and Stant had no choice but to meet them. I haven't seen Stant's operating statement, but I doubt that they had a profit in excess of the amount they had to cut to be competitive in the face of rising costs of raw materials.

Some months before that, GM felt the rebuilt fuel pumps were cutting in on the sale of new pumps and decided to go into the rebuilt business. One of their salesmen told me they bought up and took off the market, so as to get them out of the market for independent rebuilders, in excess of \$6 million of old pumps and buried them in a field as being of no value. Their price of a double action rebuilt fuel pump was identical with more rebuilders, only 5 cents higher than the lowest one that I know about. Have they put the fear in rebuilders not to try to lower their selling prices and encroach on their market? I know of no rebuilder who has lowered his prices. After getting the market they wanted, GM raised their prices somewhat.

Last October auto lamps were added to the AC line. This lamp line is merchandised under Guide, and advertised as a GM product and a "Genuine" GM part. We bought these lamps as an AC distributor. The boxes show that they were manufactured by Westinghouse in West Virginia, and the shipping label shows they were shipped to AC in Flint, Mich., and reshipped to us. I compared the prices, both the retail prices and our cost, against similar cost schedules from General Electric and Westinghouse.

Mr. McHUGH. Is the AC division located in Michigan?

Mr. DUKE. Yes, sir.

Mr. McHUGH. They were shipped from Westinghouse?

Mr. DUKE. From Westinghouse to West Virginia, and there transhipped to AC, and AC shipped them to us.

They are all the same for the miniature lamps, with one exception: GM has prices the sealed-beam units from 10 to 25 percent lower than General Electric or Westinghouse.

Mr. McHUGH. You say they are all the same? By that you mean the lamp which is manufactured by General Electric, Westinghouse?

Mr. DUKE. Tung-sol and Ever Ready, they are all the same price on the miniature. That is your taillight bulb. This statement got transcribed wrong. We should put a period after "lamp"; and with one exception GM has priced the sealed-beam units from 10 to 25 percent lower than General Electric or Westinghouse. This means that we are able to buy Westinghouse lamps now in Guide packages from the AC division of General Motors about 10 to 25 percent lower than we could buy from Westinghouse direct.

I am sure that within a few weeks GM management and other lamp-manufacturer managements will get together over a cup of coffee and compare notes and all prices will become the same. As we were buying from General Electric prior to AC, adding the Guide line, we asked the regional representative of GE what were they going to do about the price advantage GM had at the various price levels. He told us that if GM were going to sell at cost, that he was sure GE could do likewise—that he had taken it up with his home office and felt sure that GE would be competitive. In the meantime, and this is the point they make, GM has asked for and received the respect of the other lamp manufacturers that it is in, and going to stay in, the lamp business and its market must not be disturbed although they were underselling or passing on the price advantages it had acquired from Westinghouse.

Senator O'MAHONEY. You mean selling or underselling?

Mr. DUKE. Underselling.

Mr. McHUGH. You are saying that they sell beam lamps which were being made for General Motors by Westinghouse under, you say, the Guide-Lamp insignia?

Mr. DUKE. Here is a carton showing they came from Westinghouse, shipped to Westinghouse at Flint, Mich., their Guide Lamps, and here is the part number.

Mr. McHUGH. What does the term "Guide Lamp" mean?

Mr. DUKE. That is a trade name, just like AC is a division of General Motors, so is Guide Lamp.

Now, they have consolidated the Guide Lamp division as a distribution to the aftermarket through AC distributors.

Since I am on this one right here, I am going to add this: They both have the same part number, at least the numbers are universal. There is the price of AC on the 4015 A bulb, which is 76 cents. On General Electric the price on it is \$1.195, and Westinghouse and General Electric happen to be the same.

Now, then, this is not going to continue that way; there is too much disparity in the price, but they have gone in slugging, established the market, and you need not tell me that GE will say, "Well, if you are going to 76 cents, we will go to 65." No; there is a quicker way to die than that.

Mr. McHUGH. Mr. Duke, why do you think General Motors on this item is able to sell at 10 to 25 percent lower?

Mr. DUKE. This is purely speculative, sir. I have an idea that they have a contract with Westinghouse and caught them in a squeeze, and they are exploring it. I feel sure that by the first year some kind of a contract will have expired and the prices will be up.

We had the same situation on parts. It was announced the 1st of January 1954, after it was giving us all this trouble, and on November the first of this year, 22 months after depressing prices and cutting out the profit and giving we independent wholesalers a terrible time, they have raised the prices. Fifty percent off on valves that we use, as an example, is no good today. Now they are putting the profit structure back into it, but it takes 22 months for GM to voluntarily give us, and the independent manufacturers, relief.

Mr. McHUGH. Getting back to this sealed-beam lamp that Westinghouse made, does Westinghouse make that and supply that to General Motors for original equipment in the car?

Mr. DUKE. I doubt that, and they could, too. They originally introduced a Guide Lamp which was not covered by the GE-Westinghouse patents, which was not an all glass. The Guide headlight bulb originally was a metal back with a glass cover, and some of the cars I know have the Westinghouse Guide bulb in it, which is a full sealed beam. That is all I can tell you.

Mr. McHUGH. Is it possible that General Motors may have been acquiring this at a low price from Westinghouse for use as original equipment, and was able to divert some of that into the replacement market, and that may be one reason they are able to sell at this low price?

Mr. DUKE. I am of the opinion you are right.

I would like to bring up another example, which is on page 11 also.

As far back as in 1946 and 1947 and thereabout GM has attempted to keep the engine-replacement business in the hands of its dealers.

If you "bust" a block on your Chevrolet or Buick, they don't sell you a block and let you transfer the usable parts. They offer you a block, crankshaft, and piston assembly. So, to save money, you would like to go to a rebuilder. The rebuilder has difficulty in supplying you because GM, in order to keep old, worn-out engines from getting in the hands of rebuilders, give their dealers from \$10 to \$25 for the old engine as a trade-in. These motors are then smashed or cut with a torch so that they are off the market, and are not usable.

Here is another joker that works to the advantage of the car manufacturer. Often in cars and trucks the crankshafts wear out of round. The crankshaft can be put in a lathe-type grinder and the journals reground back to a perfect circle. The Internal Revenue Service insists the firm that reground this shaft is a manufacturer and the grinder pays a manufacturer's tax of 8 percent, adding to cost and making it closer to a new one, only available from GM. This applies to all remanufactured items.

Mr. McHUGH. Mr. Duke, do you have any other evidence or any other examples that are cited in your statement where you believe the General Motors Corp. is successful in setting or fixing the prices at which independent parts manufacturers are selling?

Mr. DUKE. Yes. On page 12 I have set out—here it is—the policy for all independent manufacturers to follow the manufacturer's resale schedule, and in this I have shown the difference from a 62½-percent discount a jobber gets on one line, down to 25 percent on the other. All prices are established from the manufacturer's list price.

Mr. McHUGH. Mr. Duke. I wonder if you would explain for the subcommittee just how the General Motors advertising of its genuine parts has affected you as a wholesaler.

Mr. DUKE. It is a matter of speculation as to just how severely we have been damaged by this.

With the many items that we sell, we are not in a position to, every time General Motors makes a statement that this part is genuine, it is the only one that will give service and anything else is made out of poor material that doesn't meet specifications, will not last, we can't continue to say that statement is false.

To begin with, we know that when they show a picture of a water pump as being a genuine water pump, it is not a genuine water pump. What makes a genuine water pump? A genuine one is something they originate, and they have not originated it. I would not argue about a fender, because that is genuine GM. But these other parts they have, the gaskets, valves, pistons—

Mr. McHUGH. Were made by someone else?

Mr. DUKE. They are not genuine parts; they bought them. I think I have as much right to say it is a genuine part as they do.

Mr. McHUGH. Does the General Motors Corp. have any special testing requirements or specifications in connection with the parts which are made by them which may not apply in the case where the manufacturer is reselling in the replacement market?

Mr. DUKE. No. I am sure they have spot checks, just like the manufacturer that supplies them. He has a run, and ever so often he will pick up one and see if it meets specifications. On valves, they give certain hardness tests, but that is just natural in a matter of inspection.

Mr. McHUGH. Does the independent manufacturer set up the same high testing requirements that General Motors does?

Mr. DUKE. I won't name it, but there is one, I think, that even exceeds General Motors down to an electronic device that would measure in thousandths of an inch.

Mr. McHUGH. Do you think there may be any reasons why the General Motors Corp. should engage in such an advertising practice in order to protect the public from the so-called gyp or spurious parts?

Mr. DUKE. Well, to begin with, you might as well ask me is it right for a man to engage in false advertising; is it right for him to do an unlawful business? I say it is wrong. There is no difference in it.

Are there other questions? If not, I think I will continue with my statement.

I would like to discuss the pricing structure as further support of my thinking. Items, such as valves, gaskets, brake parts, pistons, bearings for Chevrolet (these are the competitive items) have a list price established by GM and the franchise dealer buys them at a discount of 50 percent plus the royalty incentive which I have previously discussed, ranging from 20 to 25 percent from their cost.

These parts are offered in competition with the independent wholesaler by the car dealer at 50-percent discount to garages, repair shops, et cetera. Fenders, ornaments, bumpers, motors, transmissions, et cetera, or so-called captive parts which are available from no other source are sold at about half of the discounts mentioned. They seem to have no logic in establishing prices on items which have no competition; they have taken full advantage of this situation and get all the traffic will bear.

I have every reason to believe that Ford, Chrysler and the other motor manufacturers are watching with interest GM's progress in its practice and if GM is not halted, these other motor manufacturers too, will have a similar plan; in fact, Ford has announced a parts program of incentive rebates.

Let me illustrate how car manufacturers and independent suppliers operate in this business. Federal Mogul is a large supplier of original equipment bearings to the various car manufacturers. On Chevrolet bearings the jobber cost is about 62½ percent from list; with Ford, about 54 percent from list; for Caterpillar 25 percent from list, and International about 47 percent from list.

Have you any idea what would happen if FM deviated from GM's prices at all levels? I am sure they would be boycotted from any GM business and if they made any inroads on the aftermarket, FM would find that GM's list had been revised to where there was no profit or they were manufacturing at a loss. It is financial suicide for a parts supplier to GM to disrupt or refuse to go along with their price schedules. Manufacturers know this and that is the reason we do not buy from these suppliers at a firm discount; our cost is always based on what the particular car manufacturers pricing program is.

Let me tell you how well GM works both sides of the street and down the middle. We have a fleet in my hometown which had a general mixture of vehicles. GM came in and, through their truck and coach division, traded the fleet's equipment on a new fleet of diesels. GM has a local dealer to whom they gave a small fee for servicing the new units; but it assured this local dealer that their package-sale

would compensate him well, as they were being sold on a 100,000-mile warranty with the restrictions that only genuine GM parts be used and the work done at their authorized dealers.

Is it any wonder that, one by one, independent truck manufacturers have gone out of business or merged?

If GM expands, it receives a large part of its costs in tax writeoffs or rapid depreciation. Its size permits it to borrow money to expand into the financing and insurance business at the most favorable terms, and the interest is deducted as a business expense. The Government, then, shares the greater part of the cost. If it must buy up \$6 million in old fuel pumps to gain a market and the respect of competitors, its net cost is less than half this amount. It has the protection of public opinion because the newspapers and magazines would not dare offend them lest they be denied a share of their advertising budget. Their directors are so intermingled with other industries that they are in a position to dictate our economy.

As motorists we have only the protection from GM's ambitions through the tire dealers because they, too, are giants. Let us hope that the close association of the GM, Du Pont, and United States Rubber interests and the family connections of Ford and Firestone never decide to divide up the tire market. Such a cartel could bleed our Nation white.

In closing, I want to call your attention to the policy of our Government in awarding defense contracts in distressed labor markets at higher acquisition costs in order to preserve such local industries. Our production capacity will always be great so long as these thousands of local plants receive protection from monopolies and are not forced from one field after another.

You might ask why are we not worried by the oil industry? The answer lies in the fact that there are too many engaged in the business, from the small wildcat to the giants. So long as our Government frowns on mergers and keeps control of pipelines, and interstate shipments, and so long as various States maintain quotas of production, the oil industry will continue to grow and we will benefit from its contribution to our economy.

The public must be protected when three giants produce over 90 percent of the transportation needs of our country. It's a shame to think that the balance of less than 10 percent is divided among several smaller concerns and that while they do a business into the billions, they cannot operate at a profit.

I am no economist, but I have a solution which I would like to offer. I think that the motor industry is large enough to justify representation at Cabinet level and a motor transportation committee at a commission level such as ICC, radio, and television, etc. This is the best answer I know to insure against unfair business practices, monopolies, protection of the dealers, the independent manufacturers, the smaller motor manufacturers, the stockholders, the Government, and the public at large.

I think such a commission should have broad inquisitorial powers, should approve the essence of all dealer contracts, pricing policies, safety factors, horsepower-production limits as we have with cotton, tobacco, wheat, and so forth.

I also believe the best interests of the public would be served if GM and the other giants were divested of their finance business, intermingling of directorships, and ownership in dealerships. The various manufacturing divisions should be broken into separate and distinct operations. I cannot see the benefits of ownership of one corporation by another corporation, such as the large interest in GM held by Du Pont.

My final remarks concern a syndicated column appearing in our last Sunday's edition of a local paper in which the writer attempts to say that Ford is supporting one wing of the Republican Party and GM is supporting another. Must our Nation's political parties look to these giants to underwrite their campaigns from city to national level and supply its talents to the party in power? Such dual interests and implied obligations to the donors certainly are not to the best interests of the public.

May our Government have the wisdom and courage to save our Nation from the practices which are prevalent in the car-manufacturing industry today.

(The table submitted by Mr. Duke is as follows:)

APPENDIX A

Manufacturers' part No.	Description	Manufacturers' suggested list price	Car dealer's resale price	Dealers' cost from GM if sold at list price	Rebate from GM if sold at a discount from list price	Net cost to dealer if purchased from GM and sold at a discount	Cost to dealer if purchased from jobber	Jobbers' cost
3694962	Fender.....	\$26.50	\$19.88	\$15.90	\$3.98	\$11.92	(1)	(1)
3836083	Water pump.....	9.45	5.20	5.20	1.30	3.90	\$5.50	\$4.45
3835318	Valve.....	1.05	.63	.53	.13	.40	.53	.43
605383	Rear spring.....	15.50	10.66	8.53	2.13	6.40	8.77	6.80
605281	Piston.....	4.65	3.49	2.56	.64	1.92	2.50	2.04
3691929	Gasket set.....	3.85	2.31	1.93	.48	1.45	1.86	1.22
3702227	Axle shaft.....	13.65	10.24	7.56	1.89	5.67	7.76	6.63
3692951	Tie rod end.....	2.10	1.58	1.06	.26	.79	1.06	.86
5592627	429 AC fuel pump.....	5.25	2.68	2.68	.68	2.00	2.63	2.00
909026	WH bearing.....	6.15	3.08	3.08	.92	2.16	3.02	2.25

¹ Only available from dealer.

Senator O'MAHONEY. Thank you very much.

Mr. HALFPENNY. Mr. Chairman, yesterday I said we had closed, but Mr. Duke was a member of National Standard Parts, and I therefore sat with him. On behalf of our whole association we want to thank this committee for the fair and impartial manner in which you have handled this study, and your hard-working staff. They had us up until late last night with some of these witnesses, and we appreciate the painstaking work you are doing.

Senator O'MAHONEY. Who is the next witness?

Mr. BURNS. Mr. Creel. Mr. Seeley will examine the witness.

Senator O'MAHONEY. Mr. Seeley, proceed.

Mr. SEELEY. Mr. Creel, do you have a prepared statement today?

STATEMENT OF L. E. CREEL, JR., LEGAL ADVISER, BUREAU OF LITIGATION, FEDERAL TRADE COMMISSION; ACCOMPANIED BY DONALD P. MacDONALD, ATTORNEY

Mr. CREEL. Yes, sir.

Shall I proceed?

Senator O'MAHONEY. You may proceed.

Mr. Seeley?

Mr. SEELEY. Mr. Creel?

Mr. CREEL. I might say before I start that I understand I was asked to testify and the Commission authorized me to do so.

My name is L. E. Creel, Jr. I am legal adviser to the Bureau of Litigation of the Federal Trade Commission. I have been a member of the trial staff of the Federal Trade Commission since 1939, except for my period of military service. I was assigned as counsel in support of the complaint in the matter of General Motors Corp. and AC Spark Plug Co., docket No. 5620.

Senator O'MAHONEY. That is the same case, is it not, concerning which Mr. MacDonald testified?

Mr. SEELEY. Mr. MacDonald adverted to that in his testimony; yes, sir.

Mr. CREEL. In that case, the Commission on November 17, 1948, issued its complaint against General Motors Corp., and its then wholly owned subsidiary, AC Spark Plug Co., charging these companies with discriminations in price in violation of section 2 (a) and (d) of the Clayton Act as amended by the Robinson-Patman Act, and also with exclusive dealing practices in violation of section 3 of the Clayton Act. (The complaint also charged resale price maintenance in violation of sec. 5 of the Federal Trade Commission Act, but the complaint was dismissed as to that charge in view of the passage of the McGuire Act during the pendency of the proceeding.)

The complaint was in four counts, each concerned with practices in connection with the sale and distribution of AC products, which included spark plugs, cables, fuel pumps, fuel-pump parts, oil filters, oil-filter cartridges, and oil-filter elements. General Motors was one of the three largest concerns manufacturing these products, the other two being Champion Spark Plug Co. and the Electric Auto-Lite Co. Together these three firms produced and sold 90 percent of the spark plugs produced and sold in the United States. The remaining 10 percent of production was divided among a number of other small producers. In addition, about 98 percent of all cars made in this country had AC fuel pumps as original equipment.

The Commission on July 10, 1953, issued an order requiring General Motors to cease and desist from engaging in certain of the price discriminations challenged in count I, and to cease and desist from using the exclusive dealing contracts challenged in count III. The allegations with respect to the other price discriminations, charged in count I, and with respect to the allowances alleged to have been in violation of section 2 (d), were dismissed. On December 29, 1950, prior to issuance of the order, AC Spark Plug Co. was dissolved and its business was continued by General Motors acting through the AC spark plug division.

The price discriminations challenged in count I will now be considered in greater detail. AC products were sold for use as original equipment and for resale as replacements. Some customers, such as automobile manufacturers, bought both for original equipment and for resale for replacement of original equipment. Other customers, such as independent wholesalers, bought only for resale for replacement purposes. The demand for these products in the replacement market was several times as great as the demand for use as original equipment. Original equipment sales were made at substantially lower prices than replacement sales. In addition to these two price levels, prices also varied at each level, depending upon the customer.

These pricing practices were alleged to give rise to three areas of discrimination: (1) between different purchasers buying for original equipment; (2) between purchasers buying both for original equipment and replacement and purchasers buying only for replacement; and (3) between different purchasers buying for replacement. Only the latter area of price discriminations was found to be unlawful.

With respect to discriminations between different purchasers buying for original equipment at the lower price level, the evidence showed spark plug prices of 6, 10, and 15 cents per plug, depending upon the quantity purchased from all suppliers—not merely upon the quantity purchased from General Motors.

The contention was that these discriminations injured competition among engine and car manufacturers because of the competitive advantage given to large purchasers from the total savings involved in the purchase of a large number of plugs at a lower cost of from 4 to 9 cents a plug. The Commission rejected this contention upon consideration of the entire record and dismissed this phase of the case.

We turn now to the discriminations between purchasers buying both for original equipment and replacement (i. e. car manufacturers) and purchasers buying only for replacement (i. e. wholesalers). The car and engine manufacturers purchased original equipment plugs at from 6 to 15 cents each, with the 6-cent price being below cost. These manufacturers, as well as wholesalers, purchased replacement plugs at a higher price level of 24 cents a plug or more.

The contention here was that lower prices on original equipment injured competition between spark-plug manufacturers because the smaller spark-plug manufacturer could not afford to take a loss or little profit on original equipment sales for a long enough time to get the benefit from such sales in the form of stimulated replacement sales which flow from use as original equipment.

On the other hand, General Motors contended that original equipment and replacement sales were separate, distinct, and functionally different and that the discrimination was a functional differential permitted by the act. It was my contention that such was not the case.

As shown by the evidence with respect to sales to International Harvester Co., sales of the plugs for original equipment and replacement are not separate, but are related and dependent. For instance, taking International Harvester's combined volume of purchases of original equipment and replacement as 100 percent, when the percentage of total purchases of original equipment plugs decreased and the percentage of total purchases of replacement plugs increased, the price for replacement plugs decreased, so that as original equipment

plugs remained constant at 6 cents, replacement plugs dropped from 27 to 18 cents.

Although General Motors, Champion, and Electric Auto-Lite supplied substantially all original equipment plugs, the Commission failed to find in the record evidence that an undue mortality of smaller spark-plug manufacturers resulted from General Motors' lower original equipment price, and this aspect of the price discriminations was also dismissed.

The third and final area of price discrimination was with respect to purchasers of replacement plugs (i. e. wholesalers). General Motors sold to wholesalers, large retailers, and large consumers. Included among the large retailers were mail-order houses. The large consumers were principally fleet owners.

Wholesalers were classified as distributors and jobbers. Distributors were called national or warehouse, depending upon extent of distribution.

Some of the jobbers were not permitted to purchase directly from General Motors as did other jobbers and the distributors. On the contrary, they were required to place their orders with distributors but at prices, terms, and conditions dictated, and upon solicitation, by General Motors.

Senator O'MAHONEY. Precisely what do you mean by that, "and upon solicitation by General Motors"?

Mr. CREEL. And upon solicitation; by that I mean that the evidence was that General Motors employees solicited these accounts, although they were placed through distributors.

Senator O'MAHONEY. You mean that the jobbers were required, or some of them, to place their orders with distributors, but at prices, terms, and conditions dictated by General Motors?

Mr. CREEL. Yes, sir.

Senator O'MAHONEY. And upon solicitation by whom?

Mr. CREEL. By General Motors.

Senator O'MAHONEY. Well, what was solicited?

Mr. CREEL. The orders were solicited.

Senator O'MAHONEY. The orders?

Mr. CREEL. The orders were solicited. That was how the Commission was able to determine that these indirect customers were purchasers within the terms of the statute, because of solicitation by General Motors' employees and because they had to buy at the prices that were determined by General Motors.

Senator O'MAHONEY. All right.

Mr. CREEL. It was contended and the Commission found that these sales were made by respondent and designated such jobbers as indirect purchasers as distinguished from the other wholesalers (distributors and jobbers) who purchased directly from General Motors.

Large retailers were classified either as distributors, direct or indirect jobbers, or jobber chains. At one time fleet owners purchased A-C products at varying prices, depending upon the number of units in the fleet, but subsequently were classified as jobber fleet accounts, purchasing as indirect jobbers.

Under respondent's pricing practices, substantial discriminations resulted between (1) purchasers buying directly from respondent, (2) purchasers buying indirectly from respondent, and (3) purchas

ers buying directly and purchasers buying indirectly from respondent; and in each of these three categories, the unfavored purchasers were in competition with the favored purchasers.

The Commission found that there was competitive injury to the unfavored purchasers in each category resulting from lower profits, loss of customers, and general lessening of ability to compete with the favored customers. It rejected respondent's contention that such discriminations were justified on the basis of good-faith meeting of competition. Respondents also contended, without success, that the discriminations in question were functional differentials, reflecting compensation for the alleged differences in services performed, and hence not subject to the act, notwithstanding the injury to competition.

The Commission's order issued with respect to these discriminations in the sale of replacement spark plugs prohibits discriminations (1) between direct purchasers, (2) between indirect purchasers, and (3) between direct and indirect purchasers.

As has been stated, the order to cease and desist also prohibits the exclusive dealing which was challenged in count III of the complaint. General Motors' requirements as to exclusive dealing applied only to its distributors, both national and warehouse.

Until 1940, the requirement of exclusive dealing was written into General Motors distributor contracts. In 1940 and thereafter, the exclusive dealing requirement was eliminated from the contracts, but General Motors continued its exclusive dealing policy.

In 1940 this policy was made known to its distributors in an official statement. In the war years the policy more or less lapsed because of the demand and supply situation. In 1946, however, General Motors revised its policy and granted special prices to some distributors in consideration of their dealing exclusively with General Motors. It also threatened some distributors with contract cancellation if they did not conform to the policy and a number of such contracts were canceled for nonconformity. However, not all of General Motors' distributors were forced into exclusive dealing.

On March 31, 1955, General Motors filed a report setting forth the manner in which it was complying with the order. The report, on its face, showed compliance with the Commission's order and was received and filed on June 9, 1955. Thereafter the Commission directed that a field investigation be made in order to determine whether the order was in fact being complied with. That investigation is still pending.

Senator O'MAHONEY. May I ask you, Mr. Creel, to look at the first paragraph on page 6, beginning with the sentence:

In 1940 and thereafter, the exclusive dealing requirement was eliminated from the contracts, but General Motors continued its exclusive dealing policy.

Mr. CREEL. Yes, sir.

Senator O'MAHONEY. On what do you base that statement?

Mr. CREEL. There was evidence in the record in this proceeding; in fact, we had a copy of a statement of policy that was sent out by the company to its distributors, and in that statement—

Senator O'MAHONEY. Is that the statement to which you refer in the next sentence:

In 1940 this policy was made known to its distributors in an official statement.

Mr. CREEL. Yes, sir.

Senator O'MAHONEY. Mr. Seeley, do you have a copy of that statement?

Mr. SEELEY. Yes, Senator.

Senator O'MAHONEY. You are going to bring that out?

Mr. SEELEY. Yes, sir.

Senator O'MAHONEY. I yield to you, sir.

Mr. SEELEY. Mr. Creel, were the charges in the complaint which was issued in this matter, docket No. 5620, in November 1948 based upon the then current acts and practices of the respondents?

Mr. CREEL. Well, it was, but, of course, the charges and the evidence and the order all covered past practices.

Mr. SEELEY. But there was a prior complaint in that proceeding?

Mr. CREEL. Yes, there was.

Mr. SEELEY. And the purpose of the new complaint was to bring the complaint up to date so that it would be based on the current practices?

Mr. CREEL. That is correct.

Mr. SEELEY. And according to your statement, I understand that the respondents were found to have sold spark plugs to automobile manufacturers and others for original equipment at prices ranging from 6 to 15 cents per plug while they were charging purchasers for replacement use prices ranging from 20 to 40 cents per plug; is that correct?

Mr. CREEL. I didn't think it went as high as 40 cents. It may have; I just don't recall that figure.

Mr. SEELEY. And is it not a fact that the answers of both corporate respondents admitted that the cost of AC regular brand spark plugs was more than 6 cents per plug?

Mr. CREEL. That is correct.

Mr. SEELEY. Did the evidence indicate how AC made up its losses which were incurred on the sale of plugs sold for original equipment at 6 cents?

Mr. CREEL. Well, I don't recall that there was specific evidence on that point. There may have been, but my contention would have been, and I think was, that it is a simple matter of arithmetic.

Mr. SEELEY. You mean that the loss——

Mr. CREEL. In other words, the overall operation was at a profit, and a part of it at a loss, certainly the loss was made up by the profit side.

Mr. SEELEY. Would it be correct then to say that the purchasers of replacement plugs, which I understand from the record represented more than 80 percent of the total output, in effect subsidized the purchasers for original equipment?

Mr. CREEL. That was my contention in one of my arguments in the case.

Mr. SEELEY. And what were some of the effects of this practice of selling plugs for original equipment below cost?

Mr. CREEL. Well, as I said in the statement, we contended, and there was evidence to the effect, that other spark-plug manufacturers who were not financially able to sell either at cost or below cost for a considerable period of time, just were not able to get into the equipment market, and we alleged and there was evidence to the effect that it was necessary, in order for a spark-plug manufacturer to enjoy any appreciable part of the after-market, to have at least a part of the original

equipment market, because of the tendency of not only mechanics but car owners to replace with the same brand that came in his car originally.

Mr. SEELEY. And was there also evidence that some companies had been injured to the point of driving them out of the market?

Mr. CREEL. Well, there was evidence in this particular case and from a couple of small companies—one was the Leonard Spark Plug Co. and one was the Edison, which was the old Edison Splitdorf Co.—I think it was certainly generally to that effect. That is certainly what I argued as to the testimony.

Mr. SEELEY. Can you describe for us the practice of General Motors with respect to the sale of spark plugs for original equipment and for replacement purposes on military vehicles purchased by the Federal Government?

Mr. CREEL. Yes; there was some evidence in the case to the effect that when the vehicle was destined for what they call military end use, that the price the spark-plug manufacturer received was 15 cents, and that was true whether it was—as I recall, I think I am right—that was true whether or not it was replacement or original equipment. I know that was the price for the equipment plug and I think it was also true for the replacement plug.

Mr. SEELEY. And do you know whether the other two major competitors who are mentioned in your statement had the same policy with respect to military plugs as furnished for military use?

Mr. CREEL. I know the Champion did and I am satisfied that Autolite did, but I can't be certain.

Mr. SEELEY. Can you describe the pricing policy used by AC at that time in connection with purchases made by International Harvester Co.?

Mr. CREEL. Well, that was a somewhat unique arrangement. I can best tell you, I think, about that by reading from the transcript of the oral argument in the case.

Mr. SEELEY. That is your oral argument?

Mr. CREEL. Yes.

Mr. SEELEY. Before the Commission?

Mr. CREEL. Well, here is what I had to say:

A good example which shows that there cannot be a separation of the functional differences for pricing purchases between a vehicle manufacturer's purchasers of respondent's products for original equipment use and for resale, and that purchasers for either purpose is dependent upon the purchasers for the other, is shown in connection with the purchases made by International Harvester Co. For several years respondent sold spark plugs to International Harvester Co. for original equipment use at 6 cents per plug and for resale as replacement at varying prices based upon a sliding scale. The resale purchase price was dependent upon the ratio of original equipment plugs to the plugs purchased for resale.

Here is the way it worked. Taking the combined volume of purchasers of equipment and replacement plugs as 100 percent of purchases, as the percentage of total purchases of original equipment plugs decreased and the percentage of total purchases for resale increased, the net purchase price for replacement plugs decreased. In other words, the equipment plug remained constant at 6 cents and the replacement plug went downward from 27 to 18 cents.

Mr. SEELEY. Does your argument give any indication of the extent of discrimination in terms of dollars with respect to the purchases by International Harvester?

Mr. CREEL. Well, I had this to say:

To get an idea what this discrimination amounted to in money, it can be pointed out that one of the rebate checks received by the International Harvester Co. from respondents on these purchases was for \$82,122.04.

That is the only dollar figure I think I had in there.

Mr. SEELEY. And at that time in what quantities were spark plugs purchased for original equipment by vehicle manufacturers, do you know?

Mr. CREEL. Well, it would vary, of course, with the vehicle manufacturer. It would run into the millions with some, down to hundreds with others.

Senator O'MAHONEY. Was the rebate practice general?

Mr. CREEL. No, sir; I don't believe it was. As far as I recall, this International Harvester situation was unique. It was the only one that we had evidence of.

Senator O'MAHONEY. You spoke of several checks.

Mr. CREEL. Several what?

Senator O'MAHONEY. Checks, rebate checks.

Mr. CREEL. I said in my argument here that one check amounted to this much, that is the check to International Harvester.

Senator O'MAHONEY. That did not mean that that was the only check, or did it?

Mr. CREEL. It doesn't mean it was the only one; no, sir. I assume from that arrangement there must have been one every year, but I don't know.

Mr. SEELEY. In the distribution system of AC at that time, were there not at the top of the pyramid certain purchasers known as national distributors?

Mr. CREEL. That's right.

Mr. SEELEY. Does the record indicate what percentage of discount they received?

Mr. CREEL. Yes. On page 23 of our brief there is a chart that sets out the various discounts.

Mr. SEELEY. How much were they?

Mr. CREEL. Well, it varied considerably and it varied at different times.

Mr. SEELEY. What was the range?

Mr. CREEL. In one time in 1940 the warehouse distributors' net price after all discounts was 26.2 cents, and one of the national distributors, Goodyear Tire & Rubber, was 23.5.

Mr. SEELEY. Were there any special discounts to any purchasers in excess of that?

Mr. CREEL. Well, I would have to review this price analysis to tell you very much about it.

Mr. SEELEY. Do you recall whether the Greyhound Motor Supply Co. was a purchaser?

Mr. CREEL. Yes; and they were on a little bit different system. They had a flat 20 percent discount, whereas in that particular time, which was in 1947, the warehouse distributor had an 8 and a 12, which, of course, does not come up to 20.

Mr. SEELEY. And the Greyhound Motor Supply Co. was affiliated with the Greyhound Lines, was it not?

Mr. CREEL. There was evidence to that effect; yes, sir.

Mr. SEELEY. Mr. Creel, do you describe for us the differences in prices granted by AC during the same period, 1936-46, for spark plugs purchased by wholesalers?

Mr. CREEL. Well, there again I think I had better read to you from this oral argument in the case where I said:

From 1936 until 1946 these respondents' products were purchased by direct wholesalers who traded in similar and in the same territories, and who were in competition in the resale of them. Typical of these wholesalers were distributors and direct jobbers.

From 1936 until 1941 the difference in the price to these 2 was 4 cents per plug. From 1941 to November 1, 1946, the difference in price between distributors and direct jobbers was approximately 5 cents per plug. The difference in price between the distributors and indirect jobbers was approximately 6 times 65 cents per plug, or a difference which approximated one-quarter of the purchase price on each plug sold to these competing wholesalers.

Mr. SEELEY. By "indirect jobbers" do you mean those who purchase through the warehouse distributor?

Mr. CREEL. That's right, whose orders were placed through the warehouse distributor.

Mr. SEELEY. Mr. Creel, the chairman asked you a question about the exclusive dealing practices of General Motors, and I think you answered him with reference to a statement of policy.

I show you four pages marked "Commission's Exhibit No. 169" and ask you if that is the policy that you referred to as being issued by AC Spark Plug Co. in 1939.

Mr. CREEL. This one page does. That is marked "page 7," yes, sir. This doesn't bear a date, but I am satisfied it is the one that I referred to in my brief as being the one that was distributed to distributors after the exclusive dealing clause was taken out of their contract about 1939 or 1940.

Mr. SEELEY. And can you read us the clause on here which deals specifically with this question of exclusive dealing?

Mr. CREEL. Yes, it says:

These wholesale distributors, therefore, do not carry competitive products either for wholesale or retail distribution; because to do so would nullify their ability to fully represent AC and be constantly on the alert to develop, improve and enhance AC's position in the territory they cover.

Then skipping a paragraph, there is another one that is applicable:

Should an AC wholesale distributor at any time feel it to their best interest to handle a competing product, this decision is accepted by the AC Spark Plug Co.; and another concern will be sought to act as an AC wholesale distributor, so that AC's and their wholesale distributor's relationship may and will continue to be fully in the interest of each other.

Mr. SEELEY. Thank you, Mr. Creel.

Senator O'MAHONEY. What did you interpret that to mean, in more direct language?

Mr. CREEL. I interpret it to mean that regardless of the fact that they had taken the exclusive dealing contract clause out of the contract that they had with their distributors, that their policy was the same, that they expected them to remain exclusive.

Mr. SEELEY. After 1939 when AC eliminated the exclusive dealing provision in its contract and after this statement of policy concerning exclusive dealing was issued, did that continue to be the policy of the company at the time of the hearing of the case?

Mr. CREEL. There was evidence to that effect; yes, sir. Some of the witnesses so stated.

Mr. SEELEY. One of the pages in this exhibit, Mr. Creel, is marked "1939 DA", which is titled "Rider Agreement 'A' Covering AC Spark Plugs—AC Oil Filter Cartridges—AC Oil Filters and other AC Products."

Could you explain the use that this rider agreement was put to at the time?

Mr. CREEL. This is a rider to their distributor contracts.

Mr. SEELEY. Does that contain the exclusive dealing provision?

Mr. CREEL. Well, yes, it does. It says:

It is understood and agreed that this agreement is entered into by the AC Spark Plug Company in consideration of the distributor handling AC plugs, AC oil filter renewal cartridges and AC oil filters on an exclusive basis and agreeing with the AC Spark Plug Company in accordance

there is a word left out—

provisions set out in the 1939 contract to which this rider is attached, and those herein set out.

Mr. SEELEY. Mr. Chairman, in view of the endeavor of the committee to ascertain to what extent the practices or arguments of these companies may have played a significant part in the growth of these companies, I think it would be helpful to have these exhibits incorporated in the record.

Senator O'MAHONEY. They may be made a part of the record.

(The documents referred to are as follows:)

DA 1939 U. S. A.

MEMORANDUM

Covering Purchases and Shipments Made Between January 1, 1939, and
and December 31, 1939

AGREEMENT entered into this..... day of..... 19...
between THE AC SPARK PLUG COMPANY, of Flint, Michigan, party of the first part,
hereinafter called the Company, and.....

..... of..... party
of the second part, hereinafter called the Distributor. WITNESSETH:

Whereas,.....
desires to purchase and deal in such "AC" products as a Distributor thereof, as
are set out in Rider Agreement attached, which is a part of this contract.

Therefore, in consideration of the Company furnishing to the Distributor such
"AC" products, the Distributor agrees to put forth a special sales effort upon,
and carry in stock, the kinds and types of "AC" products as set out in the attached
Rider Agreement "A".

Therefore, in consideration of the Distributor's agreement to push the sale of
AC products and greatly increase his volume of AC business and do the various
things mentioned in Rider Agreement, the Company agrees to furnish the Dis-
tributor AC products at the Distributor prices set out in the attached Rider
Agreement "A".

No other Riders may be attached to and become a part of this contract.

Ordering:

The Distributor agrees at all times to carry on hand a sixty to ninety days'
stock as called for in Rider Agreement, and to allow the Company to check such
stock, or to furnish a check every thirty days, so that the Company may be kept
informed as to the movement of such stock, take orders to replenish the same
or arrange for special sales effort when necessary.

Return Shipments:

No AC products are to be returned for exchange or credit except on claims
of error in shipment which must be made on receipt of shipment.

Terms:

The Distributor agrees to remit to the Company at Flint, Michigan, for each shipment of AC products within thirty days from date of invoice; a special discount of 2 percent for cash will be given if paid within ten days from date of invoice; special 2 percent 10th proximo terms may be extended when arrangements for same have been made with AC Credit Department.

Prices:

All Distributor prices are F. O. B. AC Warehouse Stocks. Freight is equalized as nearly as possible by a zoning system. Prices are subject to change without advance notice.

The Company will make shipments from time to time as required, so far as the same is consistent with its production; subject, however, to delays caused by strikes, fires, shortage of material, shortage of labor, coal shortage, car shortage, or any cause or causes beyond the Company's control.

The Company's responsibility for goods ordered and shipped hereunder shall cease upon delivery thereof to the common carrier at Flint, Michigan, it being understood and agreed that the Distributor is to file claims and collect for all shortages and losses.

The Distributor is not authorized or empowered to act as agent for the Company, nor to transact business incurring obligations or bill goods in its name, or for its account, nor on its behalf to make any promises, warranty or representation with respect to goods or any other matter.

This contract or any of the rights hereunder shall not be transferred or assigned by the Distributor by operation of law or otherwise.

It is expressly understood that there are no oral agreements or understandings affecting this contract between the parties hereto and that no alterations or variations of the terms hereof shall be valid or binding upon the company unless made in writing and signed by an executive officer of the Company at Flint, Mich.

This contract is to be governed by and construed according to the laws of the State of Michigan. It is understood, however, that this is a general form of contract designed for use in foreign countries as well as the United States, and that any provisions hereof which may in anywise contravene the laws of any county, state or jurisdiction, shall be deemed not to be a part of this contract therein.

This contract supersedes all previous contracts between the parties hereto and may be terminated at the pleasure of either party with or without cause or reason, upon written notice given through the usual course of mail or otherwise; provided, however, that for any violation of the provisions hereof by either party, the other party may terminate the contract without notice. The termination of this contract shall cancel all orders for goods which may not have been shipped prior to the receipt of notice of such termination, but shall not release the Distributor from the payment of any sums which may be due the Company. After the termination of this contract the sale of goods or the referring of inquiries by the Company to the Distributor shall not be considered as a renewal hereof; nevertheless, all shipments thereafter made by the Company to the Distributor shall be according to the provisions hereof. In the event of the termination or cancellation of this contract, as herein provided, the Company shall have the option to re-purchase from the Distributor at cost any new AC products which the Distributor may have on hand or to which it may have a legal title.

This contract shall expire by limitation December 31, 1939 unless previously cancelled by either party as hereinbefore provided.

In Witness Whereof, the parties hereto have hereunto set their hands and seals, this _____ day of _____, 19____.

Rider Agreement "A" Attached:

THE AC SPARK PLUG COMPANY,

By _____
Regional Sales Manager.

Approved:

Vice President.

Distributor.

By _____

1939-DA U. S. A.

RIDER AGREEMENT "A"

COVERING AC SPARK PLUGS—AC OIL FILTER CARTRIDGES—AC OIL FILTERS AND OTHER
AC PRODUCTS

(To be attached to and be a part of the 1939 AC Distributor Contract)

PRICES

AC Spark Plugs:		
AC Spark Plugs.....	each---	\$.29
Titan Spark Plugs.....	each---	.16½
AC Oil Filter Cartridges and Elements:		
"W" Series.....	each---	.87
"S" Series.....	each---	.53
"L" Series.....	each---	.42½
"T" Series.....	each---	.68
AC Oil Filters:		
"W" Series.....	each---	1.20
"S" Series.....	each---	3.80
"L" Series.....	each---	2.12

The Distributor will also enjoy prices shown as "DA" prices in AC General Price List, on the following other AC Products:

Other AC Products:

AC Motorcycle Spark Plugs
 AC Oil Field Spark Plugs
 AC Spark Plug Cleaners, Accessories and Parts
 AC Spark Plug Cleaner Compound.
 AC Spark Plug Gaskets
 AC Spark Plug Tester
 AC Spark Plug Gap Gauge
 AC Spark Plug Adapters
 AC Portable Spark Plug Cleaner Display
 AC Oil Filters and Cartridges—"X" Types
 AC Oil Filter Display Stand
 AC Oil Filter Fittings
 AC Reflex Signals
 Remo Injector and Fluid
 AC Air Cleaners and Elements
 AC Display Thermometers
 AC Associate Dealer Card Rack

STOCK TO BE CARRIED

AC Spark Plugs are to be illustrated in Distributor's catalog and stocked in sufficient quantity to meet a sixty to ninety day demand—minimum stock, 2,000 plugs assorted.

AC Oil Filters and Cartridges and other AC Products listed above are to be catalogued by the Distributor and stocked in quantities sufficient to meet a sixty to ninety day demand.

It is understood and agreed that this agreement is entered into by the AC Spark Plug Company in consideration of the Distributor handling AC Plugs, AC Oil Filter Renewal Cartridges and AC Oil Filters on an exclusive basis and agreeing to work with the AC Spark Plug Company in accordance provisions set out in the 1939 contract to which this Rider is attached, and those herein set out.

It is further understood and agreed that the Distributor and his salesmen are to aggressively push the sale of AC Products and that they are to work with the AC Spark Plug Company to upbuild its business.

The Distributor further agrees to meet all obligations with the AC Spark Plug Company promptly in accordance with contract terms.

AC SPARK PLUG COMPANY**STATEMENT OF POLICY IN CONNECTION WITH THE MARKETING OF AC PRODUCTS****PRODUCTS**

Spark Plugs, Oil Filters, Oil Filter Elements, Spark Plug Cleaning Machines, Fuel Pumps, Air Cleaners.

SELLING ORGANIZATION

The AC sales organization consists of seven Regional Offices with both office and field personnel, also six hundred odd distributor (D or DA) accounts.

These distributors help secure new accounts, also help to develop those that are now handling AC Resale Products to where they will sell more AC merchandise. They furnish the names of wholesalers and dealers for AC salesmen to contact.

These distributors, therefore, do not carry competitive products either for wholesale or retail distribution; because to do so would nullify their ability to fully represent AC and be constantly on the alert to develop, improve, and enhance AC's position in the territory they cover.

All AC Resale Products are placed in one Distributor Franchise to facilitate factory contacting and the promotion of AC sales.

Should an AC Distributor at any time feel it to their best interest to handle a competing product, this decision is accepted by the AC Spark Plug Company; and another concern will be sought to act as an AC Distributor so that AC's and their distributor's relationship may and will continue to be fully in the interest of each other.

GENERAL DISTRIBUTION

AC Resale Products are sold through the following general types of outlets:

Wholesale—AC Distributors, Jobbers, Wholesalers, National Accounts.

Retail—All types of dealer outlets handling and selling automotive material.

AC SPARK PLUG COMPANY**STATEMENT OF POLICY IN CONNECTION WITH THE MARKETING OF AC PRODUCTS****PRODUCTS**

Spark Plugs, Oil Filters, Oil Filter Elements, Spark Plug Cleaning Machines, Fuel Pumps, Air Cleaners, Speedometer Cables and Cable Kits, Fuel Pump Repair and Diaphragm Kits, Gasoline Strainers.

SELLING ORGANIZATION

The AC sales organization consists of seven Regional Offices with both office and field personnel, also six hundred odd wholesale distributor accounts.

These wholesale distributors help secure new accounts, also help to develop those that are now handling AC Resale Products to where they will sell more AC merchandise. They furnish the names of local wholesalers and dealers for AC salesmen to contact.

These wholesale distributors, therefore, do not carry competitive products either for wholesale or retail distribution; because to do so would nullify their ability to fully represent AC and be constantly on the alert to develop, improve, and enhance AC's position in the territory they cover.

All AC Resale Products are placed in one Wholesale Distributor Franchise to facilitate factory contacting and the promotion of AC sales.

Should an AC Wholesale Distributor at any time feel it to their best interest to handle a competing product, this decision is accepted by the AC Spark Plug Company; and another concern will be sought to act as an AC Wholesale Distributor so that AC's and their wholesale distributor's relationship may and will continue to be fully in the interest of each other.

GENERAL DISTRIBUTION

AC Resale Products are sold through the following general types of outlets:
Wholesale—AC Wholesale Distributors, Local Jobbers, National Accounts.
Retail—All types of dealer outlets handling and selling automotive material.

Senator O'MAHONEY. On page 6 of your statement, Mr. Creel, in the paragraph to which I referred a little while ago, the concluding three sentences read as follows:

In 1946, however, General Motors revised its policy and granted special prices to some distributors in consideration of their dealing exclusively with General Motors. It also threatened—

and this is the sentence to which I direct your attention—

it also threatened some distributors with contract cancellation if they did not conform to the policy, and a number of such contracts were canceled for nonconformity.

Can you amplify that statement?

Mr. CREEL. Well, not any more than to tell you that we did call as witnesses some distributors who testified that they had had the statement made to them by AC representatives that if they did not—

Senator O'MAHONEY. Then witnesses did testify that they were threatened with contract cancellation if they didn't conform?

Mr. CREEL. That's right.

Senator O'MAHONEY. And their names and their testimony appear in the record of the hearing before the Federal Trade Commission?

Mr. CREEL. That's right; yes, sir.

Senator O'MAHONEY. And then you said—

and a number of such contracts were canceled for nonconformity.

Was there evidence to that effect?

Mr. CREEL. I am satisfied that there was. I have no independent recollection at this time. This statement came from my brief. I am satisfied of this, sir: That there was evidence that I argued was evidence of cancellation for this reason.

Senator O'MAHONEY. You wouldn't have argued that if there wasn't evidence in the case.

Mr. CREEL. No, sir.

Senator O'MAHONEY. How long since you argued?

Mr. CREEL. 1950.

Senator O'MAHONEY. Five years ago.

Mr. CREEL. Yes, sir.

Senator O'MAHONEY. And this statement is taken from the argument that you made to the Commission?

Mr. CREEL. That's right.

Senator O'MAHONEY. So that if we were to examine the record of this case you are confident we would find there the testimony of witnesses who said that their contracts had been canceled by General Motors for nonconformity?

Mr. CREEL. Yes, sir.

Senator O'MAHONEY. And it was upon that basis, in part at least, that the cease and desist order was issued?

Mr. CREEL. Well, I would say so, although I don't think as a matter of law it would be necessary for us to have shown that some distributors' contracts were actually canceled. I think it would be enough to show the mere existence of the agreement.

Senator O'MAHONEY. Well, I agree with you on that, but this was all before the Commission when it acted?

Mr. CREEL. Yes, sir; it was.

Senator O'MAHONEY. All right; thank you.

Mr. SEELEY. Mr. Creel, do you have a copy of the findings and order of the Commission entered in this case?

Mr. CREEL. Yes, I do.

Mr. SEELEY. Could we have that received for the record, Mr. Chairman?

Senator O'MAHONEY. It may be received.

(The document referred to is as follows:)

UNITED STATES OF AMERICA BEFORE FEDERAL TRADE COMMISSION

Commissioners: Edward F. Howrey, Chairman, Lowell B. Mason, James M. Mead, Stephen J. Spingarn, Albert A. Carretta.

IN THE MATTER OF GENERAL MOTORS CORPORATION AND AC SPARK PLUG COMPANY

Docket No. 5620

FINDINGS AS TO THE FACTS AND CONCLUSION

Pursuant to the provisions of the Federal Trade Commission Act and to an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by an Act of Congress approved June 29, 1936 (Robinson-Patman Act), the Federal Trade Commission on November 17, 1948, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them in Count I thereof with violation of subsection (a) of Section 2 of the Clayton Act, as amended; in Count II thereof with violation of subsection (d) of Section 2 of the Clayton Act, as amended; in Count III thereof with violation of Section 3 of the Clayton Act; and in Count IV thereof with violation of Section 5 of the Federal Trade Commission Act.

After the issuance of said complaint and the filing of respondents' answers thereto, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a hearing examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final consideration by the Commission upon the complaint, answers thereto, testimony and other evidence, recommended decision of the hearing examiner and exceptions thereto, written briefs of counsel supporting the complaint, counsel for respondents, and counsel for Kaiser-Frazer Corporation, Hudson Motor Car Company, Nash-Kelvinator Corporation, Packard Motor Car Company, and Willys-Overland Motors, Inc., as amici curiae, and oral argument of opposing counsel; and the Commission, having duly considered the matter and having entered its order disposing of the exceptions to the recommended decision of the hearing examiner, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

Paragraph One: Respondent General Motors Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located in Detroit, Michigan. Said respondent is now, and for many years past has been, engaged in the manufacture, distribution, and sale of, among other things, internal combustion engines; trucks; automobiles; and automobile, truck, tractor, and engine accessories, parts, and supplies, including spark plugs, cables, fuel pump parts, oil filters, oil filter cartridges, and oil filter elements.

Respondent AC Spark Plug Company was, until December 29, 1950, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located in Flint, Michigan. Said respondent was engaged in the distribution and sale of

automobile, truck, tractor, and engine accessories, parts, and supplies, including spark plugs, cables, fuel pumps, fuel pump parts, oil filters, oil filter cartridges, and oil filter elements, such products being hereinafter collectively referred to as "AC products." Said respondent was a wholly owned subsidiary of respondent General Motors Corporation, and said AC products were manufactured by General Motors Corporation. Under date of December 29, 1950, respondent AC Spark Plug Company was dissolved in accordance with the laws of the State of Michigan. Respondent General Motors Corporation, as successor to respondent AC Spark Plug Company, was responsible for the acts, practices, and policies shown by the record to have been engaged in by the now dissolved AC Spark Plug Company and said respondent General Motors Corporation has conceded that any order which the Commission could lawfully enter against respondent AC Spark Plug Company on the record herein may be lawfully entered against respondent General Motors Corporation (AC Spark Plug Division). The complaint herein will, therefore, be dismissed as to respondent AC Spark Plug Company, and as hereinafter used the term "respondent" does not include said AC Spark Plug Company.

Paragraph Two: Respondent General Motors Corporation transports said AC products, or causes same to be transported, for sale and distribution from the places where said products are manufactured or stored to its customers and purchasers thereof located in other and different States of the United States and in the District of Columbia; and there is, and has been at all times mentioned herein, continuous current of trade and commerce in said products between the States where respondent's factories and warehouses are located and the various other States of the United States. Said AC products are sold by respondent General Motors Corporation for use, consumption, and resale within the United States and the District of Columbia.

Paragraph Three: Respondent General Motors Corporation distributes and sells said AC products throughout the United States in the same territories and places as, and in substantial competition with, other persons and corporations engaged in the manufacture, distribution, and sale of similar products. Customers of respondent purchasing AC products for resale, and many of their customers, are competitively engaged in the resale of such products at wholesale and retail in the various territories and places where said customers, respectively, carry on their businesses. For the past several years, respondent General Motors Corporation has annually supplied more spark plugs, oil filters, fuel pumps, and speedometer cables to the original equipment field (that is, for use by manufacturers of engines and vehicles as original equipment) than any other manufacturer of these products. Respondent, Champion Spark Plug Company, and The Electric Auto-Lite Company are the three largest manufacturers of spark plugs in the United States, and although there are approximately 40 manufacturers or assemblers of spark plugs in the United States, these three companies manufacture and sell approximately 90 percent of all the spark plugs sold in the United States. Respondent manufactures and sells a substantial portion of all the spark plugs sold in the United States for both original equipment and replacement. In recent years approximately 98 percent of all automobiles manufactured in the United States have been equipped with respondent's AC fuel pumps.

Paragraph Four: Respondent General Motors Corporation has sold its said AC products to vehicle and engine manufacturers for use by such manufacturers as original equipment in vehicles and engines manufactured by them. Respondent has also sold said AC products to such manufacturers and others for resale for replacement of original equipment. The prices at which respondent has sold its said AC products of like grade and quality have varied as between (1) purchasers buying such products for original equipment; (2) purchasers buying such products for original equipment and purchasers buying such products for resale or replacement; and (3) purchasers, both direct and indirect, buying such products for resale or replacement.

Paragraph Five: In the sale of AC products for original equipment on engines and vehicles, respondent has charged varying prices for products of like grade and quality. For example, respondent has sold spark plugs to automobile and other manufacturers for original equipment at prices ranging from 6 cents per plug to 15 cents per plug or more. As of February 1, 1949, after the issuance of the complaint herein, respondent's 6-cent price on spark plugs was increased to 10 cents, and respondent's customers who had been purchasing at the 6-cent price discontinued purchasing such plugs from respondent.

The hearing examiner in his recommended decision found that respondent's price differentials between customers purchasing for original equipment resulted in injury to those customers who paid the higher prices. The hearing examiner did not state what evidence in the record he relied upon in making this finding. However, in a footnote to said finding, he stated that "While the difference in the cost of plugs in a single engine amounted to but a few cents, the profits accruing from yearly volume purchases were substantial."

The Commission, upon consideration of the entire record, is of the opinion that the allegations in the complaint as to the results of respondent's price differentials between customers purchasing AC products for original equipment are not sustained by the evidence, and that, therefore, such allegations should be dismissed.

Paragraph Six: From 1936 to 1949 respondent sold spark plugs to automobile and other manufacturers for original equipment at prices substantially less than those charged for spark plugs of like grade and quality sold said automobile and other manufacturers and others for resale for replacement of original equipment. For example, during this period respondent's prices on spark plugs sold to automobile and other manufacturers for original equipment ranged from 6 cents per plug, which price was below respondent's cost of manufacture, to 15 cents per plug, while respondent's prices on spark plugs sold to said automobile and other manufacturers and to certain other direct purchasers for resale for replacement was 24 cents per plug or more.

It is alleged in Count I of the complaint herein that respondent's practice of selling its spark plugs for original equipment below its cost of manufacture places upon the purchasers of spark plugs for replacement the injurious, unfair, and oppressive burden of paying a higher price than the price paid by others, so as to carry the loss incurred by respondent in the sale of original equipment plugs at 6 cents per plug, and that the effect of price differentials between purchasers buying for original equipment and purchasers buying for resale is and may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which respondent is engaged or to injure, destroy, or prevent competition with respondent in the manufacture, distribution, and sale of spark plugs.

The hearing examiner in his recommended decision found that the aforesaid allegations are sustained by the evidence, and his recommended order would prohibit all such price differences except those which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such products are to such purchasers sold or delivered.

In the opinion of the Commission, the hearing examiner's findings with respect to the competitive injury resulting from respondent's lower (and below cost) price on original equipment spark plugs than on replacement spark plugs is not supported by or in accordance with the greater weight of the reliable, probative, and substantial evidence in the record. The spark plugs purchased by vehicle and engine manufacturers for use as original equipment become an integral part of the engine in which they are used. None of such spark plugs are resold by such manufacturers for replacement purposes. The buyers paying the aforesaid different prices do not compete in the resale of the spark plugs. It is contended that as a result of the below cost price on original equipment spark plugs, it is necessary for the respondent to recoup its losses on original equipment business by charging higher prices for replacement spark plugs. It is also contended that as a result of the lower prices on original equipment spark plugs, smaller manufacturers are not only precluded from selling their spark plugs for original equipment, but are also placed at a substantial disadvantage in competing with respondent in the sale of replacement spark plugs.

The adoption and use of a particular spark plug by a well-known vehicle manufacturer increases the demand for that particular plug for replacement purposes. However, despite the fact that substantially all the spark plugs used as original equipment are supplied by respondent, Champion Spark Plug Company, and The Electric Auto-Lite Company, the record does not disclose any undue mortality rate on the part of smaller spark plug manufacturers which can be attributed to respondent's lower price on original equipment spark plugs than on replacement plugs.

There is testimony in the record to the effect that some competitors of the respondent have been unable to sell their spark plugs to vehicle manufacturers because such competitors have been either unable or unwilling to sell at the prices charged by respondent and its two principal competitors in the original

equipment field. However, the record as a whole does not, in the opinion of the Commission, sustain the allegations of the complaint as to the competitive injury resulting from respondent's lower price on original equipment spark plugs than on replacement spark plugs, and such allegations should, therefore, be dismissed.

Paragraph Seven: In the course and conduct of its aforesaid business, respondent has, since June 19, 1936, sold AC products for replacement of original equipment at prices which varied substantially as between (1) purchasers buying directly from respondent; (2) purchasers buying indirectly from respondent; and (3) purchasers buying directly and purchasers buying indirectly from respondent.

Prior to 1941, respondent classified certain of the accounts to whom it sold AC products directly as "D," "DA," "J," "A-1," "A-2," and "A-4" accounts. D and DA accounts were distributors handling all AC products and who were given a special price in return for handling AC spark plugs and AC oil filter cartridges on an exclusive basis and performing certain other designated services. J accounts were jobbers who stocked and sold such AC products as they found demand for and in the quantity consistent with the demand. Respondent's contracts with J accounts did not contain a provision requiring that AC spark plugs and AC oil filter cartridges be handled on an exclusive basis. A-1, A-2, and A-4 accounts were those concerns who were also sold on a contract basis (except fleet owners) because of the volume of their purchases, but whose principal business was other than the wholesaling of automotive supplies. These classifications included automobile manufacturers, chain stores, national oil and tire companies, and others. Other dealers in AC products were required to purchase, and did purchase, their requirements from distributors or wholesalers who purchased directly from respondent. However, the prices and terms and conditions applicable to such indirect purchasers were fixed and controlled by respondent. Representatives of respondent personally solicited the business of such indirect accounts and sales to such accounts were essentially sales by respondent.

The prices at which respondent sold certain of its AC products to purchasers in the different classifications described above during the year 1940 are shown below:

Item	D and A-1 Accts.	DA and A-2 Accts.	J and A-4 Accts.	Indirect Accts.
AC Spark Plugs.....	\$0.27½	\$0.29	\$0.31	\$0.32½-\$0.37
AC Oil Filters (Type No. S-1).....	3.60	3.78	4.00	4.50 - 5.40
AC Oil Filter Elements (Type No. S-11).....	.65	.69	.73	.87 - 1.05
AC Air Cleaners.....	1.80	1.80	1.94	2.22 - 2.70

From 1936 to 1941, respondent's distributors (D and DA accounts) guaranteed the accounts of certain of respondent's jobber customers and received from respondent an amount equal to 10 percent of the jobbers' purchasing price. For example, on sales of AC spark plugs by respondent to a jobber at 31 cents per plug, a distributor received 3.1 cents per plug. As a result of such payments, respondent's price discriminations in favor of its distributors and against its other customers were actually greater than is indicated by the prices appearing in the above tabulation.

From 1941 until November 1, 1946, respondent sold AC spark plugs to purchasers classified by it as "Warehouse Distributors" ("WD") at 28 cents per plug. During the same period, respondent sold to purchasers classified by it as "Jobbers" ("J") at 30 cents per plug. On sales by Warehouse Distributors to these Jobbers respondent paid the Warehouse Distributors additional compensation of 10 percent of the selling price. On sales of spark plugs by Warehouse Distributors to certain contract dealers (those classified by respondent as "SP-33" and "SP-36") respondent paid the Warehouse Distributors additional compensation of 10 percent and 5 percent, respectively. Warehouse Distributors also received additional compensation of 10 percent on sales by them of other AC products to contract dealers. Jobbers received no additional compensation on their sales to these contract dealer accounts.

From 1942 to November 1, 1946, some of respondent's jobbers purchased AC spark plugs out of Warehouse Distributors' stocks at 31.5 cents per plug (5 percent increase over the 30 cents per plug paid by jobbers purchasing direct). On sales to these indirect jobbers, Warehouse Distributors received a compensation of 10 percent of the selling price, and their net purchase price was, therefore, 28

cents less 3.15 cents, or 24.85 cents per plug, as compared with the indirect jobbers' net purchasing price of 31.5 cents per plug, a difference of 6.5 cents per plug. Contract dealers purchased AC products at prices higher than those paid by jobbers, and noncontract dealers purchased AC products at prices higher than those paid by contract dealers.

As of November 1, 1946, respondent inaugurated a new distribution program under which Warehouse Distributors could purchase AC products at jobbers' prices less 8 percent. On sales to jobbers approved by respondent, Warehouse Distributors received an additional compensation of 12 percent of the jobber price. Respondent's prices to Warehouse Distributors and jobbers during a major portion of the year 1947 on a number of different AC products are shown in the tabulation following:

Item	Jobber's Price	WD Invoice Price (Jobber's Price less 8%)	WD Price on Sales to Jobbers (Jobber's Price less 8% and 12%)
AC spark plugs.....	\$0.27	\$0.248	\$0.216
AC oil filters (type No. 8-1C).....	4.16	3.83	3.33
AC oil filter elements (type C-10).....	.68	.63	.54
AC fuel pumps (type No. 403).....	4.00	3.68	3.20
AC fuel pump repair kits (type No. R-1).....	.90	.83	.72
AC speedometer cables (type No. 601).....	.315	.29	.25
AC air cleansers (type No. 907).....	2.26	2.08	1.81

From 1938 until November 1, 1946, respondent had an arrangement whereby owners or operators of fleets of vehicles or engines could purchase AC spark plugs, oil filters, fuel pumps, and other AC products at varying prices depending upon the number of vehicles or engines operated. For example, operators of from 10 to 49 vehicles or engines could purchase AC spark plugs from distributors or jobbers at 41 cents per plug. Operators of from 50 to 199 vehicles or engines could purchase from distributors or jobbers at 37 cents per plug, and operators of 200 or more vehicles or engines could purchase from distributors or jobbers at 34 cents per plug. Fleet owners entitled to the 37-cent or 34-cent price were required to enter into a contract with respondent before they could purchase at those prices.

After November 1, 1946, large fleet accounts were designated by respondent as "Jobber Fleet Owner" accounts and were permitted to purchase AC products from Warehouse Distributors at jobber prices. Like jobber accounts, contracts with large fleet owners were subject to the approval of respondent before Warehouse Distributors were eligible for a compensation of 12 percent on their sales to Jobber Fleet Owner accounts.

At the same time that respondent was selling AC products to Warehouse Distributors at jobber prices less 8 percent, with an additional 12 percent compensation to the Warehouse Distributors on their sales to Jobbers, respondent sold AC products of like grade and quality direct to certain accounts such as oil and tire companies, distributor-manufacturers, and jobber chains, which sell on a national basis, at jobber prices less 8 percent for warehouse compensation and 5 percent as a distributional discount. On sales to jobbers, these national distributors received an additional 7 percent discount. After July 16, 1947, the aforesaid discounts of 8 percent and 5 percent were deducted from the amount of each billing at the time the billing was made. Respondent's net prices to national distributors were, therefore, 5 percent less than its net prices to Warehouse Distributors on all sales except where the national distributor or Warehouse Distributor resold to jobbers.

In addition to the varying prices at which respondent has sold AC products for resale or replacement to purchasers in the different customer classifications as described hereinabove, respondent has also sold AC products for resale or replacement to certain large purchasers at prices substantially less than those charged other large purchasers. For example, respondent sold AC spark plugs to International Harvester Company and to Allis-Chalmers Company for resale for replacement. In 1940 and 1941, respondent's price to International Harvester Company was 22.3 cents per plug, while at the same time respondent's price to Allis-Chalmers Company was 27.5 cents per plug.

Certain large retail outlets, such as Sears, Roebuck & Company, Western Auto Supply Company, Marshall's U. S. Auto Supply, Montgomery Ward, J. & R.

Motors, and others, were classified by respondent as Warehouse Distributors until August 25, 1946; as Direct Jobbers until November 1, 1946; and as Jobber Chains after the latter date. Respondent's price after November 1, 1946, to accounts classified by it as Jobber Chains was the jobber price less 8 percent and 5 percent. AC spark plugs, for example, were sold to such concerns for resale through their own retail outlets at 27 cents less 8 percent and 5 percent, or 23.6 cents per plug. In January 1947, respondent discontinued selling direct to J. & R. Motors and Montgomery Ward, and thereafter those concerns were required to purchase AC products indirect at dealer prices. Sears, Roebuck & Company was permitted to continue to purchase at the favored price. Also, Sears' retail stores were allowed to purchase AC spark plugs from local Warehouse Distributors at the local jobber's price of 31.5 cents per plug in lots of not less than 10 plugs. Other dealers in AC spark plugs paid 41 cents per plug in lots of ten.

The B. F. Goodrich Rubber Company purchased AC spark plugs from respondent at a flat price of 24 cents per plug from 1941 to 1946 and resold such plugs through its own retail outlets direct to consumers. At the same time, competitors of Goodrich, jobbers and dealers, were required to pay higher prices for the AC spark plugs they purchased.

The Pure Oil Company purchased AC spark plugs from respondent on a national distributor's basis from the beginning of 1947 until November 1948. AC products were billed and shipped to Pure Oil Company's field warehouses at national distributor's prices and the Pure Oil Company operated company-owned service stations which sold these AC products at retail in competition with other dealers who purchased from jobbers at higher prices. Respondent granted the Pure Oil Company a special price on oil filters, which price was 3 percent less than the price paid by other national distributors.

The Goodyear Tire & Rubber Company purchased AC spark plugs from respondent on a national distributor's basis less 2 percent cash discount at the time of billing. Competitors of Goodyear who purchased on the same basis were allowed a discount of 2 percent for cash payment within the discount period, the discount being deducted from the remittance instead of from the face of the invoice. Goodyear Tire & Rubber Company resold some of the AC spark plugs so purchased through its own retail outlets to consumers. Goodyear had an arrangement with Shell Oil Company, Sinclair Refining Company, Richfield Oil Company, and Sherwood Brothers whereby Goodyear paid these companies a commission of 10 percent on sales by Goodyear to service stations which handled the petroleum products of those oil companies and a commission of 7½ percent on sales to jobber customers of those oil companies. Goodyear also had a bonus plan under which it gave its customers a rebate based on the dollar volume of purchases during a year. AC spark plugs were included in determining the volume of purchases. A portion of the preferential price received by Goodyear on its purchases of AC spark plugs was thus passed on to certain of its customers.

Paragraph Eight: Direct jobbers who purchased AC products directly from respondent, as well as jobbers who purchased such products indirectly, resold such products to dealers, fleet owners, and consumers in direct competition with Warehouse Distributors and national distributors who purchased AC products directly from respondent at prices less than those paid by said jobbers. The record clearly establishes that respondent's price differentials to competing customers were substantial.

Respondent's discriminations in price in favor of Warehouse Distributors and national distributors and against jobbers, both direct and indirect, have resulted in lower profits to the jobbers, loss of customers, and a lessening of their ability to compete with Warehouse Distributors and national distributors in the resale of respondent's AC products.

Respondent's discriminations in price in favor of national distributors have given the national distributors a substantial competitive advantage over Warehouse Distributors, jobbers, and dealers in the resale of AC products. Warehouses, branches, and plants of national distributors have been able to purchase AC products at prices substantially less than those paid by their competitors, namely, Warehouse Distributors, jobbers, and dealers. For example, in November 1947 the national distributor's profit on sales of fuel pumps to jobbers was 19.6 percent and on sales to one of the dealer classifications the profit was 38.8 percent. At the same time, the profit to jobbers on sales of fuel pumps to the same dealer classification was 30 percent. Similarly, on AC oil filters the national distributor's profit was 19.6 percent on sales to jobbers and 43.2 percent on sales to dealers. At the same time, the profit to jobbers on sales of AC oil filters to dealers was 35 percent.

Respondent's discriminations in price as between its national distributor accounts have given the accounts receiving the lower prices a substantial competitive advantage over the accounts paying the higher prices.

The effect of the price discriminations described in Paragraph Seven has been and may be to substantially lessen, injure, destroy, and prevent competition between and among respondent's customers receiving the benefits of said discriminations and respondent's customers who do not receive the benefits of such discriminations.

Paragraph Nine: Respondent alleges in its answer to the complaint that any differences in prices to different accounts which it may have allowed were not discriminatory but were established in good faith to meet the equally low prices of competitors and/or the services and facilities furnished by competitors, as well as to make allowances for differences in the cost of manufacture, sale, or delivery resulting from the different methods or quantities in which AC products were sold and delivered to such different accounts.

The Commission's determination that the allegations of the complaint with respect to the injury to competition resulting from respondent's price differences between (1) customers purchasing AC spark plugs for original equipment and (2) customers purchasing AC spark plugs for original equipment and customers purchasing such spark plugs for resale or replacement are not sustained makes it unnecessary to determine whether respondent's aforesaid defenses to these price differentials are sustained by the record.

The evidence in the record does not establish that respondent's price differentials as between customers purchasing AC products for resale for replacement as described in Paragraph Seven hereof were made in good faith to meet equally low prices of competitors or the services and facilities furnished by competitors, or that such price differentials were justified by differences in the cost of manufacture, sale, or delivery resulting from the different methods or quantities in which AC products were sold and delivered to such customers.

Paragraph Ten: In and prior to 1939 respondent entered into and had in effect more than 750 contracts with distributors who were classified by respondent as "D" and "DA" accounts, which contained a provision that the distributors would handle designated AC products on an exclusive basis. Agreements entered into by respondent with such distributors in 1939 contained the following provision: "It is understood and agreed that this agreement is entered into by the AC Spark Plug Company in consideration of the Distributor handling AC Plugs, AC Oil Filter Renewal Cartridges, and AC Oil Filters on an exclusive basis * * *." (Comm. Ex. 169, p. 22.)

The exclusive dealing clause was eliminated from respondent's 1940 distributor's contracts. However, respondent's policy of requiring its distributors to handle AC products exclusively was continued, although such policy has not been uniformly adhered to. In 1940, respondent announced in a "Statement of Policy" to all its distributors that "These distributors [D and DA accounts], therefore, do not carry competitive products either for wholesale or retail distribution * * *" and "Should an AC Distributor at any time feel it to their best interest to handle a competing product, this decision is accepted by the AC Spark Plug Company; and another concern will be sought to act as an AC Distributor * * *."

From 1941 until the end of World War II the demand for AC products greatly exceeded production and respondent was unable to meet the demands of its customers. During that period respondent made little or no attempt to enforce its policy of exclusive dealing. In 1946, when the supply and demand for automotive parts began to equalize, respondent in conformity with its aforesaid policy gave preferential prices to some of its distributors on the condition or understanding that said purchasers would not deal in spark plugs, oil filters, oil filter elements, oil filter cartridges, or fuel pumps sold by competitors of respondent. Some of respondent's distributors who desired to stock competing lines of products were threatened with cancellation of their contracts if they failed to give up competing lines or products, and some distributors ceased handling competitive lines, although they carried out all the functions of the distributors and purchased in the quantities entitling them to respondent's Warehouse Distributor's contract. For example, one witness testified that respondent's regional manager "would call my attention to the fact that we could not carry a Champion line if we were an AC distributor." Another witness testified that he was told by respondent's assistant regional manager "that they would not tolerate me to sell another spark plug alongside of AC, that if I did, they would

cancel my contract." This same witness also testified that he was told by respondent's agent that "We don't allow anyone that sells AC spark plugs on a WD to carry another line of merchandise with us, and we will give you just so long to get rid of the merchandise." A regional manager for respondent testified that he had an "understanding" with this Warehouse Distributor and that he had occasion to remind this Warehouse Distributor of the "nice gentleman's agreement" which the Warehouse Distributor had with the respondent regarding exclusive dealing. Another witness testified that he was told by one of respondent's salesmen in 1948, in reference to the handling of a competitor's plug, "in no uncertain terms that that was very much against the regulations and that we had better dispose of them, which we did."

Respondent canceled its contracts with a number of its Warehouse Distributors because such Warehouse Distributors failed to comply with respondent's request to cease handling competing products.

The evidence in the record clearly establishes that respondent's distributors, except those who were exempted from respondent's exclusive dealing policy, generally understood that they were prohibited from dealing in or handling competing products.

The complaint herein does not allege, and the record does not show that respondent has enforced its aforesaid exclusive dealing policy against all its distributors. It appears that respondent permitted a number of its distributors to deal in competitive products because (1) the distributor's volume of business was so large that respondent could not enforce its policy, (2) the distributor was located in a strategic territory, or (3) respondent was unable to furnish a complete line. It also appears that some of respondent's distributors did not deal in competing products because of their own preference, rather than because of any understanding with, or coercion by, respondent. The fact remains, however, that respondent has made contracts for sale and has sold AC products to distributors on the condition, agreement, or understanding that said distributors shall not deal in products manufactured or sold by a competitor of respondent.

The effects of respondent's exclusive dealing contracts and policy have been to unreasonably restrain and substantially lessen competition between respondent and its competitors in the sale and distribution of spark plugs, oil filters, fuel pumps, speedometer cables, and related items, and to substantially lessen competition in the sale of respondent's products by the elimination of some of respondent's distributors who refused to deal in respondent's products exclusively and who were the source of supply of respondent's products to many dealers.

Paragraph Eleven: Count II of the complaint herein charges respondent with violation of subsection (d) of Section 2 of the Clayton Act, as amended. With respect to such charge the hearing examiner found in substance that from June 19, 1936, to 1941, respondent's distributors guaranteed the accounts of certain of respondent's jobber customers, and that for such service respondent paid its distributors an amount equal to 10 percent of the dollar value of the purchases of AC products by the guaranteed account. The distributors and the jobbers whose accounts were guaranteed by the distributors were in competition in the resale of AC products. This practice was discontinued at the end of 1940.

The Commission is of the opinion that the aforesaid payments by respondent to its distributors were in fact reductions in the prices paid respondent by such distributors as hereinabove found. Under the circumstances, Count II of the complaint should be dismissed.

In Count IV of the complaint herein respondent is charged with having violated Section 5 of the Federal Trade Commission Act by agreeing with and compelling distributors of and dealers in AC products to maintain the various prices fixed by respondent for the resale of AC products.

Subsequent to the completion of the hearings herein the Federal Trade Commission Act was amended with respect to certain contracts and agreements which establish minimum or stipulated resale prices (Public Law No. 542, approved July 14, 1952—the McGuire Act). This amendment had the effect of making legal certain of the acts and practices which it is contended the respondent has engaged in, in connection with the fixing and maintaining of resale prices. For example, it is contended that respondent's agreements with its distributors which fixed the exact prices at which the distributors were to resell spark plugs were illegal because the Miller-Tydings Act, which permits the fixing of minimum resale prices under certain circumstances, does not permit the fixing of exact resale prices. The aforesaid McGuire Act has the effect of permitting, under certain circumstances, contracts or agreements which prescribe stipulated, or exact, prices, as well as minimum prices. Certain of the respondent's acts

and practices which may have been illegal at the time they were committed may not, therefore, be illegal under the existing law. Under these circumstances, an order to cease and desist such practices would be inappropriate. Furthermore, the complaint herein, having been issued prior to the enactment of the aforesaid McGuire Act, may not have sufficiently informed the respondent as to its acts and practices in connection with the fixing and maintaining of resale prices challenged therein.

Upon consideration of all the foregoing and the further fact that the order to cease and desist which is being entered herewith pursuant to the charge in Count I of the complaint will be effective in preventing respondent from fixing and maintaining discriminatory prices as between its direct and indirect customers who compete with each other in the resale of respondent's AC products, the Commission is of the opinion that Count IV of the complaint should be dismissed.

CONCLUSION

The acts and practices of the respondent as hereinabove found in Paragraphs Seven, Eight, and Nine are in violation of subsection (a) of Section 2 of the Clayton Act, as amended, and the acts and practices of the respondent as hereinabove found in Paragraph Ten are in violation of Section 3 of the Clayton Act.

By the Commission, Commissioners Howrey and Carretta not participating for the reason that oral argument on the merits was heard prior to their appointment to the Commission.

[SEAL]

LOWELL B. MASON,
Acting Chairman.

Issued: July 10, 1953.

Attest:

WM. P. GLENDENING, Jr.,
Acting Secretary.

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

Commissioners: Edward F. Howrey, Chairman, Lowell B. Mason, James M. Mead, Stephen J. Spingarn, Albert A. Carretta.

IN THE MATTER OF GENERAL MOTORS CORPORATION AND AC SPARK PLUG COMPANY

Docket No. 5620

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answers of the respondents, testimony and other evidence in support of and in opposition to the allegations of said complaint taken before a hearing examiner of the Commission theretofore duly designated by it, recommended decision of the hearing examiner and exceptions thereto, briefs of counsel supporting the complaint, counsel for respondents, and counsel for Kaiser-Frazer Corporation, Hudson Motor Car Company, Nash-Kelvinator Corporation, Packard Motor Car Company, and Willys-Overland Motors, Inc., as amici curiae, and oral argument of opposing counsel; and the Commission having issued its order disposing of the exceptions to the recommended decision of the hearing examiner and having made its findings as to the facts and its conclusion that respondent General Motors Corporation has violated the provisions of subsection (a) of Section 2 of the Clayton Act, as amended, and Section 3 of said Clayton Act:

It is ordered that respondent General Motors Corporation, a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in or in connection with the sale, for replacement purposes, of spark plugs, oil filters, oil filter cartridges, oil filter elements, fuel pumps, fuel pump part kits, speedometer cables, and related automotive parts and accessories in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

(a) Discriminating, directly or indirectly, in the price of said products of like grade and quality:

1. By selling to any direct purchaser at net prices higher than the net prices charged any other direct purchaser who in fact competes in the resale and distribution of said products with the purchaser paying the higher price.

2. By selling to any indirect purchaser at net prices higher than the net prices charged any other direct or indirect purchaser who in fact competes in the resale and distribution of said products with the purchaser paying the higher price.

(b) Selling or making any contract or agreement for sale of said products on the condition, agreement, or understanding that the purchaser shall not use or deal in or sell the products of a competitor or competitors of the respondent.

(c) Enforcing in any manner or continuing in operation or effect any condition, agreement, or understanding, in or in connection with any existing contract or agreement for sale of said products, which condition, agreement, or understanding is to the effect that the purchaser shall not use or deal in or sell the products of a competitor or competitors of the respondent.

(d) Granting any rebate or fixing any price to any purchaser of said products on the condition, agreement, or understanding that such purchaser shall not use or deal in the products of a competitor or competitors of the respondent.

It Is Further Ordered that the allegations in Count I of the complaint relating to respondent's price differences between (1) purchasers buying for original equipment and (2) purchasers buying for original equipment and purchasers buying for resale for replacement, and the allegations in Counts II and IV of the complaint, be, and they hereby are, dismissed.

It Is Further Ordered that the complaint be, and it hereby is, dismissed as to respondent AC Spark Plug Company.

It Is Further Ordered that the respondent General Motors Corporation shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

By the Commission, Commissioners Howrey and Carretta not participating for the reason that oral argument on the merits was heard prior to their appointment to the Commission.

[SEAL]

WM. P. GLENDENING, Jr.,
Acting Secretary.

Issued: July 10, 1953.

Mr. SEELEY. I have just one more question on this exclusive dealing matter. There is, in addition to the exhibits which have been identified and incorporated into the record, another page of this exhibit 169 entitled "A Brief Summary of How Accounts are Classified and What Is Expected of Them," and this is marked at the top "AC reference manual." Can you tell us what that is, Mr. Creel, and how it was used?

Mr. CREEL. I have no independent recollection of this at this time. The reference manual appears to be something that was prepared for and used by the AC representatives, and this explains the different type accounts that they have.

Mr. SEELEY. Mr. MacDonald, I think your testimony shows that you performed part of the investigation on the AC Spark Plug case.

Mr. MACDONALD. I did.

Mr. SEELEY. This exhibit bears your name at the bottom. Can you tell us what that is?

Mr. MACDONALD. This is a page taken from the manual, currently prepared by the AC Spark Plug Co., for the guidance of its various employees and distributors. I don't recognize the identity of the informant from whom I secured it, except that I think that it was not submitted by General Motors, but was probably obtained from another motor manufacturer, but that was 1947. I don't really recall, clearly. I can ascertain it if it is the committee's desire.

Senator O'MAHONEY. It bears an exhibit number?

Mr. MACDONALD. Yes, sir; it bears a number that I acquired it from a gentleman by the name of Lee. I think I know where I got it.

Senator O'MAHONEY. Do you recognize the number as one of the numbers used at the time?

Mr. MACDONALD. Oh; it was used by me. I obtained this document from a source I can't ascertain.

Senator O'MAHONEY. And what is the document?

Mr. MACDONALD. It is a page prepared by the AC division entitled "AC Reference Manual, Section 8, Page 1, October 1, 1938, a Brief Summary of How Accounts Are Classified and What Is Expected of Them."

Senator O'MAHONEY. Was it made a part of the record in any proceeding?

Mr. MACDONALD. Well, it was made a part of my record in my informal report to the Commission, and quite likely introduced by Mr. Creel in evidence during the hearings, or perhaps by me during the hearings.

Senator O'MAHONEY. But you are only certain of the fact that you did receive it and did file it with your report to the Federal Trade Commission?

Mr. MACDONALD. Yes, sir.

Senator O'MAHONEY. And what is the significance of it? Why did you file it?

Mr. CREEL. I am reading from the exhibit which reads in part:

Distributors D and DA accounts: These accounts handle all AC resale products and are given distributor prices in return for handling AC spark plugs and AC oil-filter cartridges on an exclusive basis and for carrying a representative stock of all AC products; also for putting forth special sales effort on AC products; such as converting accounts to AC, putting up size charts and signs * * *.

Senator O'MAHONEY. Is it a genuine AC part?

Mr. MACDONALD. Presumably, sir.

Senator O'MAHONEY. Using the word "part" to mean "page."

Mr. MACDONALD. This is issued by the AC division for the guidance of its distributors, and it is telling them that they get a special price for being on an exclusive basis.

Senator O'MAHONEY. What I wanted to know sir, is when you filed that, were you filing that as an authentic document issued by the AC Co.?

Mr. MACDONALD. Yes, sir.

Senator O'MAHONEY. And is that your opinion of it now?

Mr. MACDONALD. Yes, sir.

Senator O'MAHONEY. It is evidence then of an exclusive proposal, exclusive pricing contract?

Mr. MACDONALD. It is.

Senator O'MAHONEY. It may be admitted in the record.

(The document referred to is as follows:)

[AC Reference Manual, sec. 8, p. 1, October 1, 1938]

A BRIEF SUMMARY OF HOW ACCOUNTS ARE CLASSIFIED AND WHAT IS EXPECTED OF THEM

DISTRIBUTORS, D AND DA ACCOUNTS

These accounts handle all AC resale products and are given distributor prices in return for handling AC spark plugs and AC oil-filter cartridges on an exclusive basis, and for carrying a representative stock of all AC products; also for

putting forth special sales effort on AC products; such as converting accounts to AC, putting up size charts and signs, and calling on all classes of trade to make sure that all kinds and types of dealers stock, sell, and push AC plugs and other AC products; and contacting regularly such JB, JC, L, A-4½, A-5, and A-6 accounts as are signed through them to see that they are well stocked and actively promoting the sale of AC products.

All shipments to these accounts are direct from the factory.

JOBBER, J ACCOUNTS

These accounts stock and sell such AC products as they find demand for and in quantities consistent with demand. They are not required to handle AC plugs and cartridges on an exclusive basis, but most of them do in order to benefit through lower stock investment and increased turnover, also to build their business up to where they may attain sufficient volume to warrant our continuing to extend J prices to them. Usage and stock requirements are larger than for JB accounts.

All shipments to J accounts must be from the AC factory at Flint, Mich.

This applies whether the J account is an authorized AC service station or not. Exceptions to this must be approved by the vice president.

If a J account finds it necessary in an emergency to pick up a small amount of merchandise from the distributor or UMS branch named in their contract, this must be in the nature of a loan to be returned when the J account receives their next direct factory shipment; otherwise JB prices will obtain.

JB ACCOUNTS

These accounts stock and sell such AC products as they find demand for and in quantities consistent with demand. They are not required to handle AC plugs and cartridges on an exclusive basis, but many of them do in order to concentrate on one line, cut down stock investment, and increase turnover, as well as build up their AC volume to where they will continue to enjoy JB prices, also be in line for a better contract and prices. Usage and stock requirements are larger than for JC accounts.

Mr. SEELEY. Mr. Creel, I just have one or two more questions. You testified concerning the relationship between the 6-cent price for Spark plugs furnished for original equipment and the price of spark plugs furnished for replacement purposes. The lowest price, I understand, for such plugs for replacement purposes was from 24 cents on up; is that right?

Mr. CREEL. No. It ranged as low as 18 cents in the case of International Harvester.

Mr. SEELEY. Would you care to give us your opinion as to whether, if the 6-cent cost which the record shows was below cost was in fact realistic and a higher price, is it not logical to suppose that the replacement plugs would be priced lower?

Mr. CREEL. You are asking me if the original equipment price were higher, would it not logically follow that the replacement price would be lower?

Mr. SEELEY. Yes.

Mr. CREEL. I should think so.

Mr. SEELEY. Referring to the order which your statement shows was issued in this case on July 10, 1953, can you tell us is this order a final order in the sense that violation of it is immediately punishable?

Mr. CREEL. No.

Mr. SEELEY. What is required in order to make it final?

Mr. CREEL. Well, it would be necessary to get a decree of affirmance and enforcement from the court of appeals.

Mr. SEELEY. And what would be necessary briefly to obtain such a decree?

Mr. CREEL. Well, it would be necessary to show violation of the order.

Mr. SEELEY. And after obtaining such a decree, would it be possible to impose a penalty for violation of it then and there?

Mr. CREEL. No.

Mr. SEELEY. What further would be required?

Mr. CREEL. All you could obtain after you had a decree of affirmance and enforcement, if a violation was then shown, why they would be in contempt of the court's order.

Mr. SEELEY. So that it would have to be proven twice over, at least?

Mr. CREEL. Yes.

Mr. SEELEY. In view of that fact, do you have any recommendation with respect to proposed legislation concerning the Clayton Act or any part of it?

Mr. CREEL. Well, the Commission has for many years recommended that the Clayton Act be amended so that the orders under the Clayton Act be amended so that the orders under the Clayton Act would be final as they are under the Federal Trade Commission Act, and I certainly personally agree with that.

Mr. SEELEY. I have no further questions, Mr. Chairman.

Senator O'MAHONEY. Well, in order to make the record clear, let me attempt to summarize what the questions and answers have just developed.

A cease-and-desist order under the Clayton Act is not self-enforcing.

Mr. CREEL. That's right.

Senator O'MAHONEY. To become self-enforcing or to become enforceable, it must be passed upon by the court.

Mr. CREEL. Yes, sir.

Senator O'MAHONEY. Does the Federal Trade Commission have to take the initiative?

Mr. CREEL. Yes.

Senator O'MAHONEY. And it is when the Federal Trade Commission does take that initiative to get an enforcement order that the case has to be tried all over again before the court?

Mr. CREEL. Well, not entirely over again; no, sir. The question of whether or not there was a violation of the order must be determined; yes, sir.

Senator O'MAHONEY. It must be effectively proven to the satisfaction of the court.

Mr. CREEL. Yes, sir.

Senator O'MAHONEY. Before an enforcement order is required. And the Federal Trade Commission has repeatedly recommended that a cease-and-desist order be made final unless appealed from by the litigant against whom it originally issued.

Mr. CREEL. Yes, sir; that is presently the provision in the Federal Trade Commission Act. An order becomes final after 60 days unless a petition is filed.

Senator O'MAHONEY. We are talking about the Clayton Act.

Mr. CREEL. Yes, sir.

Senator O'MAHONEY. In other words, the Federal Trade Commission has wanted the Clayton Act to be amended in the terms of the Federal Trade Commission.

Mr. CREEL. That is my understanding of the recommendation.

Senator O'MAHONEY. I wanted that clear in the record, and I didn't think it was.

Mr. MACDONALD. You have the peculiar situation on docket 3152 that the first count of that order is presently enforceable by civil penalty, the second count under the Clayton Act you would have to appeal to the court of appeals for an affirmation before we could proceed with respect to automotive parts.

Senator O'MAHONEY. Well, one can understand why businessmen say that some of these antitrust laws are not altogether clear.

Mr. MACDONALD. You appreciate, sir, that the act was amended after we issued the complaint on the old basis.

Senator O'MAHONEY. Oh, yes, indeed. That took three out, as I understand it. There was a little word here, Mr. Creel, that you used on page 4, the second paragraph:

Although General Motors, Champion, and Electric Auto-Lite supplied substantially all original equipment plugs, the Commission failed to find in the record evidence that an undue mortality of smaller spark-plug manufacturers resulted from General Motors' lower original equipment price, and this aspect of the price discriminations was also dismissed.

One would assume from that statement that the Trade Commission felt that a murder of one was insufficient, there would have to be a massacre of several.

Mr. CREEL. Well, there was evidence that a number of sparkplug manufacturers were doing business and the Commission made some such statement as I did in its opinion in the findings.

Senator O'MAHONEY. Well, what is undue mortality?

Mr. CREEL. I don't know what they meant by it, but I gather that they didn't feel that the record disclosed that this low equipment price had caused any undue mortality among the smaller manufacturers.

Senator O'MAHONEY. Well, it is an assumption that some mortality did occur, didn't it? It implies that clearly, but it wasn't undue.

Mr. CREEL. I believe that is probably a direct quote from the findings.

Senator O'MAHONEY. All right. There being no further witnesses this afternoon, the committee will stand in recess until tomorrow morning at 10 o'clock.

(Whereupon, at 4:05 p. m., the committee adjourned, to reconvene on Wednesday, November 23, 1955, at 10 a. m.)

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